Ordinance 20-029

An Emergency Ordinance Amending Emergency Ordinance 20-028 to Extend and to Comprehensively Adopt Provisions to Address a Public Health Crisis and to Revise Certain Measures which are Necessary for the Immediate Preservation of the Public Health, Safety and Welfare of the City and are Necessary to Slow the Community Spread of Coronavirus (COVID-19) in the City of Brookings, South Dakota.

I.

Be It Ordained and Enacted by the Council of the City of Brookings, State of South Dakota, as follows:

Whereas, the City of Brookings has the authority pursuant to SDCL 9-29-1 and SDCL 9- 32-1 to pass ordinances for the purpose of promoting the health, safety and general welfare of the community, and to do what may be necessary for the promotion of health or the suppression of diseases; and

Whereas, COVID-19 has been confirmed in more than 100 countries, including the United States; and

Whereas, COVID-19 is a continuing global pandemic. United States Supreme Court Chief Justice Roberts stated in a 2020 decision “people may be infected but asymptomatic, [and] they may unwittingly infect others”; and

Whereas, the Centers for Disease Control and Prevention, the World Health Organization, medical and scientific associations and physicians suggest individuals wear a face covering to slow the spread of COVID-19; and

Whereas, Ordinance 20-028 is intended to slow the rise of positive cases of COVID-19 and slow down the rate of infection, and therefore bears a real and substantial relationship to public health because the measures are recognized to be the best available procedures to slow the rate of transmission of COVID-19; and

Whereas, the City of Brookings and many States and communities across the country have already implemented White House and CDC recommendations by restricting occupancy at bars, restaurants, food courts, gyms, and other indoor and outdoor venues where people congregate until the public health emergency is over; and

Whereas, the failure to successfully implement social distancing would likely result in higher numbers of infected individuals and has the potential to threaten or overwhelm the capacity of the City's health care providers; and

Whereas, it is important that control measures, including requiring face masks in indoor places, continue to be taken to reduce or slow down the spread of COVID-19

in order to protect the health and safety of the City's residents, especially seniors and those with underlying health conditions that make them particularly vulnerable to COVID-19; and
Whereas, the City of Brookings has been utilizing Ordinance 20-028 to address the COVID-19 public emergency in the City of Brookings, and

Whereas, based on the number of cases in Brookings County, the number of hospitalizations in the City, and the available modeling, the City Council believes the occupancy, social distancing and face covering restrictions should be continued given the community spread of COVID-19 cases in the City and State, and

Whereas, this Emergency Ordinance is intended to extend, in comprehensive form, the emergency measures and restrictions set forth in Emergency Ordinance 20-028.

Now Therefore, Be It Ordained by the City Council of Brookings as follows:

1. Any businesses identified in Ordinance 20-005 may reopen and remain open to serve patrons on-site pursuant to the conditions established in this ordinance.

2. Businesses within the City of Brookings which are open to the public shall observe the following guidelines to slow the spread of COVID-19:
   a) Establish a minimum six-foot distance between any tables, chairs, and barstools. This provision does not need to be observed between members of the same household.
   b) All businesses shall collaborate with the City to identify their occupancy allowance and post it in a conspicuous location outside the building.
   c) Restaurants, bars, and casinos shall be limited to a maximum of ten (10) customers or a capacity of one-half (½) of their maximum posted capacity, whichever is greater. Capacity will be posted at the front of the business.
   d) All restaurants, food trucks and bars shall disinfect or dispose of all menus before and after use by each customer. Condiment containers shall be cleaned/disinfected between each group and shall not be shared among multiple groups. Salad bars and self-service buffets shall not be permitted.
   e) Grocery stores, retail businesses, recreation and fitness businesses shall be limited to a maximum of ten (10) customers or a capacity of one-half (½) of their maximum posted capacity, whichever is greater. Capacity will be posted at the front of the business.
   f) Require social distance spacing while waiting for service or entry into a business. Spacing may be accomplished by requiring people to remain in their vehicles.

g) In retail and grocery businesses, install a plexiglass, or similar divider where physically possible between the cashier and customer.
h) Require employees to wash hands at regular intervals.
i) Restaurant and bar (those businesses with an alcoholic beverage license) staff and employees must wear masks which cover the employee's nose and mouth.
j) In casinos, video lottery machines must be cleaned and disinfected between each customer.
k) Staff and employees of hair salons, nail and tanning salons, spas and barber shops must wear masks which cover their nose and mouth during customer contact times. Customer seating must be at least six (6) feet apart.
l) In gyms and fitness facilities, any equipment and/or exercise mats
must be cleaned or disinfected between each use.
m) Customer seating in theaters and similar businesses shall be reduced to allow for social distancing, with certain seats marked as "not available due to social distancing guidelines" to ensure compliance.
n) Hand sanitizer locations readily available for public use should be made available at grocery stores and retail businesses.
o) Enhanced cleaning/disinfecting requirements should be used for motel and hotel rooms.
p) Seating for large gatherings shall be reduced to comply with a six-foot minimum distance between attendees.
q) Businesses are encouraged to conduct daily employee screenings for illness.
r) Businesses are encouraged to post signage outside of their facility that encourages customers to not enter if they are not feeling well or have COVID-19 symptoms.
s) Businesses are encouraged to develop risk mitigation strategies for restrooms or other areas where social distancing requirements are likely to be compromised.
t) Certain businesses (e.g. gym, recreation facilities, casinos, etc.) are encouraged to have customers wipe down their equipment/machines before and after use. However, it will still be the responsibility of the business to ensure proper cleaning and disinfecting is occurring.
u) Businesses, particularly salons, barber shops, and spas are encouraged to provide service on an appointment-only basis to ensure proper social distancing and hygiene practices are met.
v) Masks are required at city-sanctioned events. Masks which cover a person's nose and mouth are required for all persons attending

or working at events which require a City permit when a minimum of six- foot distance cannot be maintained or achieved.

w) Masks are required when obtaining services from the healthcare sector in settings, including but not limited to, a hospital, pharmacy, medical clinic, laboratory, physician or dental office, veterinary clinic, or blood bank, unless directed otherwise by an employee thereof or a health care provider.

x) Masks are required while riding on public transportation or while in a taxi, private car service, or ride-sharing vehicle.

3. The following individuals are exempt from wearing masks or other face coverings:

a) Persons age five years or under; Children age two years and under in particular should not wear a face covering because of the risk of suffocation;

b) Persons with a medical condition, mental health condition, or disability that prevents wearing a face covering. This includes persons with a medical condition for whom wearing a face covering could obstruct breathing or who are unconscious, incapacitated, or otherwise unable to remove a face covering without assistance;

c) Persons who are deaf or hard of hearing, or when communicating with a person who is deaf or hard of hearing, where the ability to see the mouth is essential for communication;

d) Persons for whom wearing a face covering would create a risk to the person related to their work, as determined by local, state, or federal regulations or workplace safety guidelines;

e) Persons who are obtaining a service involving the nose or face for which temporary removal of the face covering is necessary to perform the service;

f) Persons who are seated at a restaurant or other establishment that offers food or beverage service, while they are eating or drinking, provided they maintain a 6-foot distance between individuals (not including individuals who reside together or are seated together) with only infrequent or incidental moments of closer proximity;

g) Athletes and participants who are engaged in an organized sports activity that allows athletes to maintain a 6-foot distance from others with only infrequent or incidental moments of closer proximity;

h) Persons who are engaged in an activity that a professional or recreational association, public regulatory entity, medical association, or other public health oriented entity has determined cannot be safely conducted while wearing a mask or other face covering and where other protections and precautions are established and utilized;

i) Persons attending educational institutions where the public and private schools through 12th grade, colleges, and universities have implemented protections.

j) Persons engaged in church and religious places of worship, including preschools, social halls and chapels within church facilities, which may implement their own protections.

4. In addition to the specific requirements listed above, businesses shall operate in a manner consistent with CDC guidelines and any applicable state regulations and the South Dakota Governor's Executive Orders.

5. The City encourages all members of the public within the City of Brookings to continue to follow the CDC guidelines and recommended hygiene practices, including, but not limited to, engaging in social distancing, and wearing masks when outside their homes wherever possible.

6. Businesses can request administrative exceptions from the City that allow them to modify the strict compliance with these requirements so long as their proposal contains alternative means to implement social distancing or hygiene requirements. The City will not approve exceptions which completely exempt a business from implementing social distancing, or from following the CDC guidelines.

7. Any business entity, owner, or supervising manager of any business that is not in compliance with these regulations, or an approved alternative plan pursuant to Section 6. above, shall be in violation of this Ordinance.

8. Pursuant to this ordinance, the City Council may by resolution modify the mandatory closures and enact revised restrictions, including restrictions of public gatherings and public movements it deems necessary to address the current public health emergency. Any revised measures and restrictions which are adopted by resolution shall be for a specific duration and shall be periodically reviewed to ensure the continued necessity of such restrictions or closures.

9. The restrictions set forth herein do not apply to the following entities which have their own specific COVID-19 restrictions:
   a. Health care facilities, residential care facilities, congregate care facilities, and correctional facilities.
   b. Crisis shelters, homeless shelters, and other similar institutions.
   c. Any emergency facilities necessary for the response to the current public health emergency or any other community emergency or disaster.
   d. Official meetings of the city, schools, county or state.

e. The operations and meetings of any state or federal courts.
f. Educational institutions where public and private schools through 12th grade, colleges, and universities have implemented protections.
g. Places of worship.
h. Any and all polling places, including absentee voting and Election Day polling places, as well as all locations for processing absentee ballots and counting ballots. All polling places for absentee and Election Day voting shall remain open at all times.

10. This ordinance shall remain in effect for a period of sixty (60) days, at which time it shall be automatically repealed unless specifically readopted for an additional period of time by the City Council. Any dates identified in this ordinance may be adjusted at any time within the sixty (60) day period covered by this ordinance by a resolution or ordinance of the City Council.

11. Enforcement - Violation of this Resolution may result in a fine, and multiple violations may result in further enforcement procedures, including legal and equitable action to enforce this Ordinance for the safety of the public.

12. Until the Second Reading of this ordinance is completed, approved and published, Ordinance 20-028 shall set forth the applicable measures deemed necessary to slow the spread of Coronavirus in the City of Brookings.

13. Face Masks/Face Coverings Required. Within the City of Brookings, all persons except those under the age of five (5) and those with a medical condition, mental health condition, or disability that makes it unreasonable for the individual to maintain a face covering, must wear a face mask/face covering in indoor businesses and indoor public places where six (6) foot social distancing cannot be achieved or maintained. A "face covering" or "mask" must be worn to cover the nose and mouth completely, and can include a paper or disposable face mask, a cloth mask, a scarf, a bandanna, or neck gaiter.

II.

BE IT FURTHER ORDAINED that pursuant to SDCL 9-19-13, this ordinance is adopted to address a public health emergency and is necessary for the immediate preservation of the public peace, health, safety and welfare of the City and shall become effective immediately upon passage and publication.

First Reading: December 8, 2020
Second Reading: December 15, 2020
Published: December 18, 2020

CITY OF BROOKINGS:

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Keith W. Corbett, Mayor

ATTEST:

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Bonnie Foster, City Clerk