

CITY OF ALAMEDA ORDINANCE NO. _____
New Series

AN URGENCY ORDINANCE AMENDING THE ALAMEDA MUNICIPAL
CODE BY ADDING A NEW ARTICLE 24-13 (PUBLIC HEALTH)
PROVIDING FOR THE ENFORCEMENT OF ALAMEDA COUNTY
HEALTH OFFICER ORDERS AND DIRECTIVES

WHEREAS, Section 3-12 of the City Charter authorizes the City Council, with a four-fifths vote, to adopt, as an urgency measure, an ordinance for the immediate preservation of the public peace, health or safety without following the procedures otherwise required prior to adoption of an ordinance; and

WHEREAS, Government Code Section 36937 allows a city, including a charter city, to adopt an urgency ordinance to take effect immediately upon its adoption for the preservation of the public peace, health or safety upon a finding of facts constituting the urgency thereof; and

WHEREAS, conditions of extreme peril to the health, safety and welfare of persons have arisen in the world, the nation, the State, the County of Alameda and the City of Alameda ("City") due to the following:

International, national, state, and local health and governmental authorities are responding to an outbreak of respiratory disease caused by a novel coronavirus named "SARS-CoV-2," and the disease it causes which has been named "coronavirus disease 2019," abbreviated COVID-19 ("COVID-19"). The Center for Disease Control and Prevention ("CDC") has stated that COVID-19 is a serious public health threat, based on current information. Cases of COVID-19 have been diagnosed throughout the world, the United States, the State of California, the County of Alameda and the City of Alameda.

The exact modes of transmission of COVID-19, the factors facilitating human to human transmission, the extent of asymptomatic viral shedding, the groups most at risk of serious illness, the attack rate, and the case fatality rate all remain active areas of investigation. The CDC believes, at this time, the symptoms appear two to fourteen days after exposure. Currently, there are no vaccine or specific anti-viral treatment for COVID-19.

Actions are being taken to protect public health and limit the spread of COVID-19 but whether those actions will be successful is unknown at this time.

WHEREAS, on March 1 and 5, 2020, the Alameda County Public Health Officer issued Declarations of Local Health Emergency, and on March 10, 2020, the Alameda County Board of Supervisors adopted a Resolution ratifying the Declarations of Local Health Emergency, and on March 17, 2020, the Alameda County Board of Supervisors adopted a Resolution ratifying the Declaration of Local Emergency; and

WHEREAS, on March 4, 2020, the Governor of the State of California declared a state of emergency to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and help the state prepare for a broader spread of COVID-19; and

WHEREAS, on March 13, 2020, the President of the United States of America declared a national emergency and announced that the federal government would make emergency funding available to assist state and local governments in preventing the spread and addressing the effects of COVID-19; and

WHEREAS, the CDC, the California Department of Health, and the Alameda County Department of Public Health have all issued recommendations including but not limited to strict adherence to social distancing guidelines, canceling or postponing group events, working from home, and other precautions to protect public health and prevent transmission of this communicable virus. Other counties throughout the state have similar directives; and

WHEREAS, on March 16, 2020, the Alameda County Public Health Officer issued a countywide order that prohibits all public and private group gatherings and requires people to shelter at their place of residence with limited exceptions. The purpose of the Order was to restrict and limit gathering of persons and require closures of non-essential retail businesses in an effort to stem or slow the spread of the virus; and

WHEREAS, on March 17, 2020, the City Council made findings that due to the COVID-19 pandemic, conditions of extreme peril to the health, safety and welfare of persons have arisen in the City of Alameda and, based thereon, adopted an urgency ordinance (Ordinance No. 3267) declaring a local emergency exists in the City as a result of the COVID-19 pandemic, and on April 7, 2020, the City Council made findings that a local emergency continues to exist in the City as a result of the COVID-19 pandemic and, based thereon, adopted an urgency ordinance (Ordinance No. 3272) extending the declaration of the existence of a local emergency; and

WHEREAS, on March 19, 2020, the Governor of the State of California issued Executive Order N-33-20, an Order of the State Public Health Officer ordering all individuals living in California to stay home or at their place of residence except as needed to maintain continuity of operations of outlined federal critical infrastructure sectors ("State Shelter Order"); and

WHEREAS, since March, 2020, the Alameda County Public Health Officer has issued various updates to its Shelter In Place Orders, in order to balance the need to continue certain essential activities while maintaining maximum control over the spread of COVID 19; and

WHEREAS, the Health Officer has also issued a number of other orders to limit the spread of COVID 19, including requiring the use of face coverings, regulating clinical laboratories, and providing guidance to licensed facilities and other agencies; and

WHEREAS, in light of continuing increases in positive cases of COVID-19, the Health Officer, joined by countless state, regional and local health agencies and experts, has continued to express grave concerns regarding the spread of COVID-19 and urges prompt and decisive actions to slow the spread of the pandemic; and

WHEREAS, the City Council determines that the City of Alameda must answer the call and take immediate affirmative measures, including authorizing the issuance of administrative citations for non-compliance with Health Officer orders and directives; and

WHEREAS, given the virulent spread of COVID-19, time is of the essence; and

WHEREAS, for the reasons set forth above, this Ordinance is declared by the City Council to be necessary for preserving the public welfare, health, or safety and to avoid a current, immediate and direct threat to the health, safety or welfare of the community, and the recitals above taken together constitute the City Council's statements of the reasons constituting such necessity and urgency; and

WHEREAS, this Ordinance is adopted pursuant to the City's police powers and powers afforded to the City in time of national, state, county and local emergency during an unprecedented health pandemic, such powers being afforded by the State Constitution, State law, the City Charter and the Alameda Municipal Code ("AMC") to protect the public welfare, health, and safety, and to protect life and property as affected by the emergency, in that this ordinance facilitates access to food, essential goods, and medication and assists the local business community in dealing with the extreme economic challenges it is facing as a result of measures to slow the spread of COVID-19; and

WHEREAS, adoption of this ordinance is exempt from review under the California Environmental Quality Act ("CEQA") under CEQA Guidelines Sections 15378 (not a project) and 15061(b)(3) (no significant environmental impact); and

WHEREAS, by the staff report, testimony, and documentary evidence presented at the September 1, 2020 City Council meeting, the City Council has been provided with additional information upon which the findings and actions set forth in this ordinance are based.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ALAMEDA as follows:

Section 1: Alameda Municipal Code Article 24-13 Public Health is hereby added to read as follows:

24-13 Public Health

24-13.1 Health Officer

The City of Alameda's Health Officer shall be the County Health Officer for the County of Alameda, or their designee.

24-13.2 Compliance with Health Officers Orders and Directives

It shall be unlawful for any person to fail or refuse to comply with any order or directive issued by the Health Officer or designee.

24-13.3 Penalties

A. Any person who violates any provision of this Article or the terms and conditions of any permit or approval issued by the Health Officer shall be guilty of an infraction which shall be punishable by a fine not exceeding \$250.00, or a misdemeanor, which shall be punishable by a fine not exceeding \$1,000.00 per violation, or by imprisonment in the County Jail for a period not exceeding 6 months, or by both such fine and imprisonment.

B. Any person who violates any provision of this Article or the terms and conditions of any permit or approval issued by the Health Officer may be subject to administrative citation issued pursuant to Article 1-7 of this Code.

C. Any person convicted of violating any provision of this Article in a criminal case or found to be in violation of this Article in a civil or administrative case brought by a law enforcement agency, including but not limited to the City of Alameda and the County of Alameda, shall be ordered to reimburse the City and other participating law enforcement agencies their full investigative costs.

D. Any activity conducted or maintained contrary to this Article shall constitute a public nuisance.

E. The remedies provided in this article are not exclusive, and nothing in this article shall preclude any person from seeking any other remedies, penalties or procedures provided by law.

Section 2: IMPLIED REPEAL

Any provision of the AMC inconsistent with this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to the extent necessary to effectuate this Ordinance.

Section 3: CEQA DETERMINATION

The City Council finds and determines that the adoption of this ordinance is exempt from review under the California Environmental Quality Act (CEQA) pursuant to the following, each a separate and independent basis: CEQA Guidelines, Section 15378 (not a project) and Section 15061(b)(3) (no significant environmental impact).

Section 4: SEVERABILITY

If any provision of this Ordinance is held by a court of competent jurisdiction to be invalid, this invalidity shall not affect other provisions of this Ordinance that can be given effect without the invalid provision and therefore the provisions of this Ordinance are severable. The City Council declares that it would have enacted each section, subsection, paragraph, subparagraph and sentence notwithstanding the invalidity of any other section, subsection, paragraph, subparagraph or sentence.

Section 5: EFFECTIVE DATE

As an urgency ordinance, this Ordinance becomes effective immediately upon its adoption by a four-fifths vote of the City Council.

Presiding Officer of the City Council

Attest:

Lara Weisiger, City Clerk

* * * * *

I, the undersigned, hereby certify that the foregoing Ordinance was duly and regularly adopted and passed by the Council of the City of Alameda in a regular meeting assembled on the ____ day of _____ 2020, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said City this ____ day of _____ 2020.

Lara Weisiger, City Clerk
City of Alameda

Approved as to form:

Yibin Shen, City Attorney
City of Alameda