

CITY OF UNALASKA
UNALASKA, ALASKA

RESOLUTION 2020-70

A RESOLUTION OF THE UNALASKA CITY COUNCIL CONTINUING MEASURES TO PROTECT PUBLIC HEALTH

WHEREAS, the COVID-19 pandemic has generated a public health emergency that threatens to overwhelm the City of Unalaska health system and the economy of our community, endangering the lives and wellbeing of our citizens; and

WHEREAS, on March 11, 2020, the World Health Organization (WHO) declared the virus a pandemic; and

WHEREAS, on March 11, 2020, the State of Alaska declared a public health emergency in response to the anticipated outbreak of the virus in Alaska and Governor Dunleavy implemented several health mandates and recommendations to help reduce the spread of COVID-19; and

WHEREAS, on March 13, 2020, President Donald J. Trump declared a national emergency in response to the virus pandemic; and

WHEREAS, on March 15, 2020, Mayor Vincent M. Tutiakoff, Sr. declared a local emergency in the City of Unalaska, authorizing the City Manager to take necessary actions to reduce the impact and spread of the coronavirus known as COVID-19 through the City of Unalaska; and

WHEREAS, on March 18, 2020, the Unalaska City Council passed Resolution 2020-16, declaring a local emergency to remain in effect for so long as the declaration of a Public Health Disaster in the State of Alaska Remains in effect; and

WHEREAS, beginning on March 24, 2020, the Unalaska City Council has passed resolutions instituting additional local public health protective measures; and

WHEREAS, the Centers for Disease Control and Prevention (CDC) have issued public health guidance, including the social distancing measures, the recommendation that everyone wear a cloth face covering when in public settings where social distancing measures are difficult to maintain, and that certain individual take greater precautions; and

WHEREAS, local health officials have advised that in addition to practicing social distancing and staying at home as much as possible, additional measures that include the covering of an individual's nose and mouth will prevent asymptomatic individuals with COVID-19 from unknowingly spreading the disease; and

WHEREAS, local health officials have advised that stronger protective measures are required given Unalaska's remoteness, lack of road access to the mainland, and the fact that the majority of our community's businesses are designated as essential, critical or support critical infrastructure; and

WHEREAS, local health officials have advised that stronger protective measures are required to conserve limited local healthcare resources, as they strive to meet the needs of all community members and essential workforce employees; and

WHEREAS, as of October 21, 2020, there were 12,644 (residents and non-residents) cumulative known COVID-19 cases in the state, including travel-related cases in geographically isolated and remote communities; and

WHEREAS, there have been cases of seasonal non-resident workers throughout Alaska, including Unalaska, and which have been contained due to effective quarantine measures; and

WHEREAS, as of October 21, 2020, 104 patients have tested positive locally in Unalaska; and

WHEREAS, COVID-19 continues to pose a grave and imminent threat to the health, safety, order and welfare to the residents of the City; and

WHEREAS, this resolution shall have the same effect as a rule issued by the City Manager pursuant to Unalaska Code of Ordinances §2.96.040.

NOW THEREFORE BE IT RESOLVED:

1. Governor Mandates. Everyone in the City must follow all health mandates issued by the State of Alaska. Review local requirements carefully as some are more restrictive than state mandates.

2. Face Coverings. All customers and visitors of businesses and organizations that are open and operating must wear face masks covering their nose and mouth to provide additional protection for employees and customers. The face coverings need not be medical-grade masks or N95 respirators, but can be cloth face coverings. Face masks may be temporarily removed as necessary and incidental to utilizing the business or service.

A cloth face covering is a material that covers the nose and mouth. It can be secured to the head with ties or straps or simply wrapped around the lower face. It can be made of a variety of materials, such as cotton, silk, or linen. A cloth face covering may be factory-made or sewn by hand, or can be improvised from household items such as scarfs, T-shirts, sweatshirts or towels.

A business owner or operator may refuse admission or service to any individual who fails to wear a face covering as required by this resolution.

3. Traveler Quarantine. A person traveling into the City of Unalaska ("the city") by vessel or airplane, from another community or port, must self-quarantine for 14 days upon arriving at their destination and monitor for symptoms of illness. During travel and following the quarantine period, adherence to CDC guidance, State of Alaska mandates, and local orders and resolutions is required. This includes appropriate social distancing measures and adherence to face covering requirements. People traveling for critical business purposes are required to follow all State of Alaska health mandates including complying with their approved state plans.

- a. Critical workforce employees must self-quarantine immediately upon arrival. If their employer has filed the required protocol with the City as required at paragraph 4, critical workforce employees may work during their self-quarantine period in accordance with that protocol. All workers under the critical workforce exception are required to self-quarantine during non-work hours within the 14 day time period.

- b. Patients or travelers arriving in Unalaska/Dutch Harbor, whose final destination is not Unalaska/Dutch Harbor, are required to self-quarantine during their stopover, but not remain here for the entire 14 day time period. This includes, but is not limited to, air travel.
- c. For individuals arriving on a vessel, time spent at sea is credited to the 14 day quarantine period. The time at sea is counted from the time of departure from the last location at which a crew member disembarked the vessel, provided that no one has boarded the vessel in that time. Vessel captains shall maintain a ship's log or equivalent record demonstrating compliance with State Health Mandate 17, when applicable, and detailing all activities at port or contact with other vessels or personnel during the time for which they seek credit for time at sea. For vessels that have been at sea more than 14 days and no one has disembarked or boarded the vessel, no quarantine is required unless individuals are showing symptoms of COVID-19, including, but not limited to fever, chills, or respiratory symptoms. Vessels at sea for less than 14 days, where no one has disembarked or boarded the vessel, may complete their quarantine in port as long as quarantine is not broken for the remainder of the 14 days.
- d. Anyone who is required to self-quarantine must adhere to the following:
 - 1) You may leave your designated quarantine location for:
 - i. medical emergencies or to seek medical care;
 - ii. to travel in your personal vehicle or vessel, individually or with members of your household, without contacting others, so long as you go directly from the quarantine location to the vehicle or vessel and directly back to the quarantine location; and
 - iii. to participate in outdoor recreational activities (i.e. fishing, hiking) individually or with members of your household, without contacting others, so long as you go directly from the quarantine location to the recreational activity and directly back to the quarantine location.
 - 2) Do not visit any public spaces, including, but not limited to stores, pools, meeting rooms, fitness centers or restaurants.
 - 3) Do not allow visitors in or out of your designated quarantine location other than a physician, healthcare provider, or individual authorized to enter the designated quarantine location by Unified Command.
 - 4) Comply with all rules or protocols related to your quarantine as set forth by your hotel or rented lodging.
 - 5) If you are required to self-quarantine and there are other individuals in your residence, hotel room, or rented lodging, you are required to comply with social distancing guidelines, sanitize regularly touched surfaces, and follow CDC best practices for hand washing.

4. Essential Services/Critical Infrastructure State Protocols. Businesses identified as “essential services” or as “critical infrastructure” and operating in the City shall submit all protocols or plans required by State of Alaska Health Mandates to the City of Unalaska. These plans are to be submitted as soon as possible after filing these protocols or plans with the State of Alaska and regardless of whether the State review of those protocols or plans has been completed. Businesses shall also provide the City confirmation of the State’s approval of its plan or protocol no more than three days after receiving such approval. In the event a business plan or protocol requires amendment or is rejected by the State, the business submitting that plan or protocol must notify the City no more than 48 hours after receiving the State’s notification of deficiency. Such businesses shall submit their plans, protocols, or relevant notifications to the City of Unalaska by email to COVID19PLANS@ci.unalaska.ak.us. The definitions of “essential services” and “critical infrastructure” may be found in the Alaska Essential Services and Critical Workforce Order, Amended May 5, 2020. The plan submission requirements and definitions in the May 5 Order apply to businesses doing business in Unalaska regardless of any modifications or revocations of the Order or State Health Mandates 10, 10.1 or 18.

5. Business COVID-19 Protection Measures and Protocols. All businesses and organizations open and operating within the City shall comply with all relevant State of Alaska Health Mandates. All businesses and organizations, other than state, federal or municipal government facilities, which are open to members of the public at a physical location within the City shall post “COVID-19 Protection Measures and Procedures” on all entrances to and exits from the business. The “COVID-19 Protection Measures and Procedures” shall include, at minimum:

- a. The sanitation measures taken by the business or organization to prevent the spread of COVID-19.
- b. The social distancing measures taken by the business or organization to prevent the spread of COVID-19.
- c. A description of a process for obtaining goods or services from the business or organization without entering the business, if such a process is at all feasible.
- d. A contact number for individuals to report any violations of these measures to the owner or designee.
- e. Clearly state that any person with symptoms consistent with COVID-19 may not enter the premises.
- f. Shuttles, van services and taxis shall clearly state that the total number of passengers shall be limited to three.

6. Penalties. Violation of this resolution is punishable as a misdemeanor under Unalaska Code of Ordinances § 2.96.090 and is a Public Nuisance, subject to the remedies in Unalaska Code of Ordinances, Title 11, Chapter 8, including prosecution as a minor offense.

7. Effective Date; Expiration. This resolution shall be effective at noon on October 28, 2020 and expires at noon on November 11, 2020. The City Council may extend it as necessary, or the City Manager may extend it or amend it pursuant to the emergency management powers under Unalaska Code of Ordinances § 2.96 and Resolution 2020-16.

PASSED AND ADOPTED by a duly constituted quorum of the Unalaska City Council on October 27, 2020.



Vincent M. Tutiakoff, Sr.
Mayor

ATTEST:



Marjie Veeder, CMC
City Clerk



MEMORANDUM TO COUNCIL

To: Mayor and City Council Members
From: Erin Reinders, City Manager
Date: October 27, 2020
Re: Resolution 2020-70: Continuing measures to protect public health

SUMMARY: Council has been considering resolutions instituting local measures to protect the public health. The first of these measures was approved on March 24, 2020. The measures continue to be evaluated as this situation unfolds.

PREVIOUS COUNCIL ACTION: On March 18, 2020, the Unalaska City Council passed Resolution 2020-16, declaring a local emergency to remain in effect for so long as the declaration of a Public Health Disaster in the State of Alaska Remains in effect.

Council approved Resolution 2020-17 on March 24, 2020. The focus of Resolution 2020-17 was on hunkering down, traveler quarantine and the closure of non-essential business. The resolution expired April 15.

Council approved Resolution 2020-19 on April 14, extending and clarifying the orders outlined in Resolution 2020-17, and instituted additional measures protecting the public health. The resolution expired April 29, 2020.

Council approved Resolution 2020-25 on April 28, extending the orders in Resolution 2020-19. This resolution expired May 13, 2020.

Council approved Resolution 2020-34 on May 12, extending the orders in Resolution 2020-25 and replacing the "Hunker Down" section with a "Social Distancing" section. This resolution expired May 27, 2020. Also on May 12, Council discussed the topic of Cruise Ships and the Alaska Marine Highway System passengers.

Council approved Resolution 2020-36 on May 26, extending and clarifying the orders in Resolution 2020-34 and specifically addressing the Alaska Marine Highway System. This resolution expired June 10, 2020.

Council approved Resolution 2020-38 on June 9, extending and clarifying the orders in Resolution 2020-36 and removed the reference to the Alaska Marine Highway System. This resolution expired June 24, 2020.

Council approved Resolution 2020-41 on June 23, extending the orders in Resolution 2020-38 and began allowing for individuals in traveler self-quarantine to go outside or in their personal vehicles and vessels with certain limitations. This resolution expired July 15, 2020.

Council approved Resolution 2020-45 on July 14, extending the orders in Resolution 2020-41 and clarified that time at sea counted toward the 14 traveler self-quarantine time period. This resolution expired July 29, 2020.

Council approved Resolution 2020-49 on July 28, extending the orders in Resolution 2020-45 and focus in on requirements to reduce the length of the document. This resolution expired August 12, 2020.

Council approved Resolution 2020-51 on August 11, extending the orders in Resolution 2020-49. This resolution expired August 26, 2020.

Council approved Resolution 2020-54 on August 25, extending the orders in Resolution 2020-51. This resolution expired September 9, 2020.

Council approved Resolution 2020-58 on September 8, extending the orders in Resolution 2020-54. This resolution expired September 23, 2020.

Council approved Resolution 2020-63 on September 22, extending the orders in Resolution 2020-58. This resolution expired October 14, 2020.

Council approved Resolution 2020-66 on October 13, extending the orders in Resolution 2020-63. This resolution expires October 28, 2020. The date was set so that Council could reconsider the action at the October 27 Council Meeting.

BACKGROUND: The nation, state and our city are in a state of emergency and in the midst of a public health crisis. The state continues to update its health mandates, though less frequently than it had previously. The State has eased back on a number of the state-wide restrictions.

State Mandates

State Health Mandate 10, regulating interstate and international travel, was revised October 15. It applies to residents, nonresidents and critical infrastructure employees. Under the new guidelines, all travelers to Alaska must either: a. test negative for COVID-19 within 72 hours of departure into Alaska, b. take a test within 72 hours of travel and self-quarantine pending results, or c. pay \$250 for a test at the airport (there is no charge for the test for Alaska residents).

Residents may avoid the testing requirement by self-quarantining for 14 days after arrival. For residents traveling outside of Alaska for less than 72 hours, no test or quarantine is required.

The new mandate also offers testing to those traveling to communities that require or recommend testing. It also includes somewhat unenforceable language that intrastate travelers "agree" to follow local requirements in remote communities.

There is also a waiver of the testing requirement for those travelers who have previously tested positive for COVID-19 and who can prove they have recovered.

Critical infrastructure workers must have a letter from their employer identifying the employee and containing details of their travel in conformance with their employer's protective plan. The employer must also have its protective plan or protocol filed with the state. The plan must explain a protocol for testing and/or quarantine.

Health Mandate 10, Appendix 1 remains in place. Appendix 1 applies to all workers traveling into Alaska to work in a seafood processing plant, or onboard a processor or catcher-processor vessel. It provides six alternative methods to quarantine, depending, in part on whether the processing workers are shore-based or working on processor vessels. Appendix 1 contains

detailed screening requirements for seafood processing workers, and also adopts by reference the CDC and OSHA requirements for Meat and Poultry Processing Workers and Employers.

Other State Health Mandates remain in effect as well:

- Health Mandate 15 regulates certain healthcare practices. It contains detailed guidance as to certain types of procedures and types of practices. It requires “universal masking procedures” and other strict testing, screening and distancing measures to protect providers and patients.
- Health Mandate 17 and Appendix 1 regulate independent commercial fishing vessels. Appendix 1 reiterates the 14-day quarantine requirement and outlines not just onboard conduct, but also contains a detailed list of requirements to limit interaction with the public at times when the fishing vessels are in communities. All fishing vessels should have a completed, signed acknowledgment of Health Mandate 17, which is found at Appendix 2.
- Health Mandate 18 governs intrastate travel. As a community on the Alaska Marine Highway system, there is essentially no restriction on travel to Unalaska. The mandate does expressly allow communities to enact local travel restrictions, but the local restrictions cannot require “automatic” quarantine or measures that prevent travel for critical personal needs or conduct of essential services and critical infrastructure.

As with previous Council Resolutions addressing protective measures, this resolution addresses what is different locally from statewide mandates or additional protective measures specific to our community.

State Declaration

The State of Alaska’s current emergency declaration expires on November 15, 2020. The Governor has indicated that he will not make a determination about the current declaration until after the election. The Alaska Municipal League (AML) did a great job in outlining what some potential actions in regard to the State’s declaration, including:

- The Governor can let the current declaration expire
- The Governor can declare a new emergency for up to 30 days
- The Governor can call the Legislature into special session to extend the current or new declaration
- The Legislature can call itself in

Given these options, it is possible that there will be a time in the near future where the state will operate under no declaration. If this occurs, as AML also point out, the current public health mandates would expire too. This includes any current travel restrictions, critical workforce requirements, and industry mitigation plans.

If no action were taken, Unalaska’s local declaration would expire as well because Unalaska’s local state of emergency declaration is currently linked to the State of Alaska’s declaration. This impacts our local resolutions regarding protective measures and emergency orders. I have asked our attorney to look into other impacts if the State’s declaration were to expire, and what actions might be required as a result. Mr. Severin will provide a separate memo to Council regarding the impact of the potential expiration of the state declaration.

DISCUSSION: The resolution is set expire November 11, 2020 but may be amended or extended as necessary, and will be revisited at the Council Meeting on November 10, 2020. The following protective measures from previous resolutions remain in Resolution 2020-70, with the revisions noted:

- **Face Coverings** - Customers and visitors of businesses and organizations must wear a covering over their nose and mouth (*no change*).
- **14 Day Traveler Self Quarantine** - Individuals traveling into the City by vessel or airplane must self-quarantine, with limited exceptions (*no change*).
- **State Approved Plan Submittal** - Business that are required to submit plans to the State, must submit those to the City (*no change*).
- **Protective Protocols** - All business open to the public must post their basic measures to protect the public health on their doors (*no change*).

As has been the case all along, additional local protective measures, such as business closures or gathering size limits, may be considered if the risk threshold increases locally. City Staff and other members of Unalaska's Unified Command continue to work together to support the community and these protective measures.

ALTERNATIVES: Council may choose to approve, amend or disapprove this resolution.

FINANCIAL IMPLICATIONS: Unknown at this time.

LEGAL: This resolution, like all the other resolutions protecting public health that Council has considered during this pandemic, was drafted in close collaboration with Sam Severin, one of our City Attorneys.

STAFF RECOMMENDATION: With heavy consideration of our local health care professionals, the City Manager recommends approval.

PROPOSED MOTION: I move to approve Resolution 2020-70.

ATTACHMENT:

- City Attorney Memo dated October 22, 2020 regarding Potential Expiration of State Disaster Declaration

BOYD, CHANDLER, FALCONER & MUNSON, LLP

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MEMORANDUM

TO: Unalaska City Council

FROM: Samuel C. Severin, City Attorney
Boyd, Chandler, Falconer, & Munson, LLP

RE: Potential Expiration of State Disaster Declaration

DATE: October 22, 2020

This memorandum addresses the impact of the potential expiration of the Governor's Disaster Proclamation on Unalaska's local regulations, and suggests required changes to the local regulations that would be necessary if the state declaration expires November 15.

In response to what was then an "imminent threat" of an outbreak of COVID-19 in Alaska, Governor Mike Dunleavy declared a public health disaster emergency on March 11, 2020. H.B. 241 extended the emergency until November 15. The governor can extend the emergency for an additional 30 days, but a longer extension requires legislative action (Alaska Statute 26.23.020 (c)). Governor Dunleavy has not indicated an intent to extend the declaration.

Unalaska has the legal authority to continue to pass legislation to curb the spread of COVID-19. Unalaska's City Code, at chapter 2.96, provides the authority and a framework for local legislation. §2.96C, which defines "Disaster" specifically includes "epidemic." The governor's declaration has been frequently cited in the legislative findings portions of past COVID-19 resolutions. That is not a matter of legal necessity, but to provide context.

In the early innings of the pandemic, the State asserted that its mandates superseded or preempted municipal regulations (e.g. former Mandate 12 regarding interstate travel). Beginning in May, the State began taking a more permissive approach to local regulation. This question of local communities' right to restrict travel was a persistent question, which would no longer be at issue at all upon expiration of the State declaration. The most recent version of Health Mandate 10 (October 15) is very deferential to local restriction on interstate travel. Communities generally have broad power to protect themselves in a pandemic, based on United State Supreme Court precedent dating back as far as 1905.

The current proposed Resolution regarding public health measures is set to expire November 11. The following resolution will need to address a number of issues if the State's declaration is allowed to expire November 15.

1. The local emergency declaration in Resolution 2020-16 should be continued. Assuming the Council still finds that the COVID-19 pandemic warrants local regulation, extending the current emergency declaration is largely a matter of adding a few additional statements to a resolution that looks much like the resolutions that have been passed every two weeks since March. Or a separate resolution could be drafted declaring an emergency.

Some municipalities, like Juneau and Anchorage, do not appear to have expiration dates on their emergency declarations. The Unalaska Code of Ordinances requires slightly more, but does not contain a specific period of time. § 2.96.030 requires, in part:

“The emergency proclaimed in accordance with the provisions of this section shall terminate after seven (7) days from the issuance of the proclamation, or upon issuance of a resolution of the City Council declaring that an emergency may be extended for such additional periods of time as deemed necessary by resolution of the City Council. All proclamations issued under this section shall indicate the nature of the disaster, that area or areas threatened or affected, and the conditions which have brought it about or which make possible the termination of the disaster emergency.”

The code language above suggests that a date certain is preferred. But it gives no guidance as to a specific time frame, only that it should include a statement that the declaration “may be extended for such additional periods of time as deemed necessary by resolution of the City Council.” A date in late January or early February is suggested, as it would allow reevaluation in light of the flu season.

2. The current requirement at Section 1 that everyone must follow state mandates would likely be deleted. It may be modified, rather than deleted, if the State goes to some other type of regulatory scheme that is not based on Mandates. It could be modified to say that everyone must follow CDC guidelines. Prior resolutions required adherence to State DHHS and CDC guidelines. The language was eventually removed as unnecessary and superfluous. The requirements of face coverings, quarantine and regulating businesses are specific and enforceable. Most CDC guidelines are not easily enforced by the City (e.g. handwashing, social distancing). A resolution need not advise people follow best practices.
3. The local quarantine would not have to substantively change. It would have to be modified. References to “critical workforce employees” and State Health Mandate 17, for example, would have to be modified if those terms become obsolete. Those modifications need not be done immediately – language could be added that those state

mandates are followed notwithstanding any revision or expiration. They would be effectively adopted by reference for the time being. If those documents contain the most useful definitions or protocols, it is possible to adopt them by reference.

Alternatively, those definitions could be restated in future resolutions. For example, prior resolutions, such as Resolution 2020-19, contained a lengthy definition of “critical businesses.” It was similar to the definition the state has used.

The reference to State Health Mandate 17 could be easily remedied. It could simply be deleted. If it were deleted, a vessel captain would still have to maintain a log or record detailing all activities at port or contact with other vessels if seeking credit toward quarantine for time at sea. The reference to State Health Mandate 17 is not a critical aspect of subsection c.

4. Section 4, regarding Essential Services/Critical Infrastructure State Protocols, would require a wholesale revision if the state stops requiring submission of protocols. The requirement could be deleted completely. Alternatively, the City could undertake a business safety plan review program. The City would have to generate a form for businesses to submit, which could be based on the existing state form.

Note that Section 4 was designed to survive revocation of State Health Mandates. It could remain effective beyond November 15, but Section 4 requires businesses to submit to the City the plan that they have submitted to the State. If the State stops its plan submission requirement, the information contained in a plan submitted to the state would be stale.

A broader issue is what regulation would apply to the fishing industry if Health Mandates 10, Appendix 1 and Health Mandate 17 were allowed to lapse. The City has not been required to separately regulate safety in the fishing industry. This could be accomplished by simply adopting the relevant state health mandates, regardless of the expiration dates, and stating that the mandates apply to vessels operating in Unalaska or processors based in Unalaska. Absent any state regulatory action, it may be advisable to adopt an emergency ordinance or temporary non-code ordinance related to the fishing industry, which would allow more permanency for the industry.