

CITY OF DILLINGHAM, ALASKA

EMERGENCY ORDINANCE NO. 2020-07

AN EMERGENCY ORDINANCE OF THE DILLINGHAM CITY COUNCIL; 1) MODIFYING AND RENAMING A TEMPORARY LAND USE DISTRICT FORMERLY CALLED THE ESSENTIAL AIR TRAVEL DISTRICT; 2) REQUIRING CERTAIN PERSONS TO SELF-QUARANTINE FOR FOURTEEN DAYS; AND 3) REQUIRING CERTAIN PERSONS TO OBTAIN A TRAVEL USE PERMIT

BE IT ENACTED BY THE DILLINGHAM CITY COUNCIL:

Section 1. Legislative Findings:

1. The United States Center for Disease Control and Prevention ("CDC") has identified the COVID-19 virus as a new strain of coronavirus not previously identified in humans, causing respiratory disease that can result in serious illness or death and which poses a significant public health risk.
2. On March 11, 2020, the World Health Organization declared a pandemic related to COVID-19.
3. The Covid-19 pandemic is being compared to the 1918 flu pandemic.
4. On March 11, 2020, Governor Mike Dunleavy declared a Public Health Disaster Emergency in the State of Alaska; and
5. On March 19, 2020, the Dillingham City Council approved the closure of certain public facilities through April 5, 2020 and adopted Resolution 2020-11 Declaring a Public Health Disaster Emergency per AS 26.23.140 and Dillingham Municipal Code Section 2.64.0020(B) to exist in Dillingham.
6. On March 13, 2020, President Donald Trump declared a National Emergency.
7. The CDC has recommended all persons at higher risk for COVID-19 complications avoid all non-Essential travel.
8. On March 20, 2020 the United States State Department issued a Level 4 Travel Advisor "Do Not Travel" advising all United States citizens to avoid all international travel due to the global impact of Covid-19; and
9. On March 17, 2020, the Governor of the State of Alaska issued Covid-19 Health Mandate 004 "to prevent or slow the spread of Coronavirus Disease" which mandated a 14 day self-quarantine for persons traveling from CDC Level 3 Travel Health Notice Areas.
10. On March 24, 2020, the Curyung Tribal Council adopted Resolution 2020-11 recommending that all non-Essential travel into and out of the community of Dillingham cease by

12:01 a.m. March 26, 2020 and recommended this restriction apply to travel from other villages as well as from regional centers and Anchorage and apply to all forms of transportation including air travel, snow machine and other ground and water transportation.

11. As of the date of adoption of this Emergency Ordinance, the only access to and from Dillingham from other places in the world is by water, overland via the Lake Road and through regularly scheduled or chartered air services which use the Dillingham Airport.

12. As of the date of this Emergency Ordinance there are no known cases of Covid-19 in Dillingham.

13. As of Sunday April 26 there had been 152 confirmed cases of Covid-19 in Anchorage.

14. The most effective way to prevent introduction of the Covid-19 virus to Dillingham is through prevention of persons from outside Dillingham who are infected with Covid-19 from entering Dillingham through the Dillingham Airport Terminal and Dillingham port and harbor facilities.

15. The CDC and federal and state health authorities have recommended all persons practice "social distancing" by remaining at least a six foot separation from other persons at all times and;

16. It is frequently not possible to maintain a six foot separation from other persons when using commercial air services between Dillingham and Anchorage or Dillingham and other cities in the Bristol Bay region due to the small size of the aircraft used to provide air transportation.

17. It is frequently not possible for persons using the Dillingham Small Boat Harbor to maintain a six foot separation from other persons.

18. The President's Coronavirus Guidelines for America recommends that people AVOID SOCIAL GATHERINGS OF MORE THAN TEN PEOPLE.

19. Traveling by air between Dillingham and other locations in Alaska frequently involves social gatherings of more than ten people.

20. Use of the Dillingham small boat harbor during commercial fishing season frequently involves gatherings of more than ten people.

21. The President's Coronavirus Guidelines for America recommends persons "AVOID DISCRETIONARY TRAVEL".

22. The President's Coronavirus Guidelines for America recommends persons LISTEN TO AND FOLLOW THE DIRECTIONS OF YOUR STATE AND LOCAL AUTHORITIES.

23. On March 19 the Emergency Room medical directors of Joint-Base Elmendorf Richardson Hospital, Providence Alaska Medical Center, Alaska Regional Hospital, the Alaska Native Medical Center, Fairbanks Memorial Hospital, Bartlett Regional Hospital, the Mat-Su Regional Medical Center, the Central Peninsula Hospital, the President of the Alaska Chapter of the American College of Emergency Physicians and the Immediate Past President of the Alaska Chapter of the American College of Emergency Physicians recommended an immediate statewide ban on non-Essential travel to and from Alaska and immediate consideration of a similar ban on

non-Essential travel within Alaska as a reasonable and prudent measure to reduce the impact and spread of coronavirus.

24. On March 23, 2020, the Governor of Alaska issued Health Mandate 10 requiring “all people arriving in Alaska whether resident, worker or visitor” to self-quarantine for 14 days and monitor for illness by proceeding “directly from the airport to your designated quarantine location” and to “remain in your designated quarantine location for a period of 14 days”. The stated purpose of Mandate 10 was to “protect the public health of Alaskans . . . in order to mitigate the impact of COVID-19”.

25. On March 23, 2020, the State of Alaska issued additional details on implementation of Mandate 10. Those details indicated “All workers arriving in the State must follow the 14-day self-quarantine guidance. If your business meets the definitions of critical infrastructure workers, you may put them to work immediately, provided that you have an approved Community/Workforce Protective Plan and that you enact the protective measures in your plan to safeguard the surrounding community and the remainder of your workforce from the newly arrived workers” and further indicated “All newly arrived workers will observe self-quarantine protocols in their non-work times until they have completed the required 14-day period.”

26. On March 27, 2020, the State of Alaska restricted the movement of individuals within the State of Alaska in order to prevent, slow and otherwise disrupt the spread of the virus that causes COVID-19 as described in COVID-19 Health Mandate 12.

27. On April 2, 2020, the City Council approved Emergency Ordinance No. 2020-06(A) restricting air travel into Dillingham. Emergency Ordinance No. 2020-06(A) is due to expire on May 1, 2020.

28. Since April 2, the number of COVID-19 confirmed in Alaska has steadily increased. As of April 26, 2020, the State of Alaska had confirmed 341 cases of COVID-19. During the same time period the number of COVID-19 cases confirmed in Dillingham remained at zero confirming the effectiveness of Emergency Ordinance No. 2020-06 in preventing the spread of COVID-19 in Dillingham.

29. On April 21, 2020, the State of Alaska extended Mandate 10 until May 19, 2020 and extended Mandate 12 indefinitely.

30. On April 23, 2020 the Governor of Alaska issued Health Mandate 17 applicable to individual commercial fishing vessels that were not participating in a so-called “fleet plan”.

31. Health Mandate 17 recognizes that “some local communities, boatyards, or harbormasters may have enacted additional protective measures” and requires individual vessel owners and captains to comply with those measures.

32. It is anticipated that as many as ten thousand people from outside Dillingham will enter city boundaries via the airport or by water after May 1 and remain in the Dillingham area through the conclusion of the commercial and sport fishing seasons. These individuals will come from within Alaska, from other states on the west coast of the United States and from other countries where large numbers of confirmed cases of the COVID-19 virus have been reported.

33. As of April 26, the number of confirmed cases of COVID-19 infections in Oregon, Washington and California was:

California - 43,691
Oregon - 2,311
Washington - 13,663

34. Because so many of those engaged in the commercial fishing industry come from outside Alaska and are not permanent Dillingham residents the existing data as to the rate of infection, per capita testing, and rate of hospitalization within Alaska is of limited use in gaging the risk of overwhelming local medical facilities during the 2020 commercial fishing season.

35. The only health care facility in Dillingham is the Kanakanak Clinic with a current capacity of 12 beds, 1 critical care unit and no working ventilators.

36. On April 23, 2020 the Bristol Bay Area Health Corporation informed the State of Alaska that it did not have the capability of providing COVID-19 medical care to persons entering Dillingham during the commercial fishing season and stated "Without a plan of action, BBAHC resources will "most likely" be "strained and overwhelmed".

37. As of the date of this ordinance the State of Alaska has not provided any information to the City of Dillingham or its residents of plans to establish temporary medical facilities to provide COVID-19 medical care during the commercial fishing season.

38. As of the date of this ordinance, the State of Alaska has not provided any information to the City of Dillingham regarding a plan to transport persons infected with COVID-19 and needing medical care during the commercial fishing season to medical facilities elsewhere in Alaska.

39. The State of Alaska has access to sophisticated epidemiological modeling expertise including existing relationships with the University of Washington and the University of Alaska Anchorage faculty and staff.

40. As of the date of this ordinance, the State of Alaska has not provided any information to the City of Dillingham or its residents of epidemiological models predicting the number of anticipated cases of COVID-19 that will occur in Bristol Bay during the commercial fishing season or the number of cases needing hospitalization.

41. The Governor has repeatedly stated and state law enforcement personnel and the State of Alaska District Attorney's office have repeatedly confirmed they have no intention of actually enforcing any of the Health Mandates issued by the Governor including Health Mandate 10, Health Mandate 12 and Health Mandate 17.

42. Many of the requirements of Health Mandate 17 are unlikely to be able to be practiced by the Bristol Bay commercial fishing fleet. For example, the vessels participating in the fishery are limited in length to 32 feet. Most will not have rooms with designated toilets that could be used for quarantine and isolation. Many captains are unlikely to be able to obtain some or all of the personal protective equipment referenced in Mandate 17.

43. Maintaining social distancing while in port in Dillingham during the commercial fishing season is not possible. The number of vessels using the Dillingham Small Boat Harbor exceeds the amount of space available for vessels to moor directly to floats. Vessels must tie

directly to other vessels and accessing land requires captains and crew to jump from boat to boat until reaching a harbor float.

44. As of the date of this Ordinance, in every Alaskan community in which the COVID-19 virus has been confirmed to be present the initial presence of the virus resulted from an infected (and therefore contagious) person traveling into the community from another place.

45. It is a known medical fact that persons infected with the COVID-19 virus are contagious and therefore spread the virus within a community for days before exhibiting symptoms of a COVID-19 infection; and

46. The public health risk to residents of Dillingham increases with each flight or marine vessel that arrives in Dillingham.

Section 2. Finding of Emergency. The City Council hereby finds the facts set forth in Section 1 constitute an emergency.

Section 3. Authority. This ordinance is enacted pursuant to the general police powers of the City of Dillingham, the City's authority to establish land use regulations to protect the public health and general welfare of persons in Dillingham under Section 18.08.010 of the Dillingham Municipal Code, and the City's authority to regulate use of public facilities such as streets and highways and the Dillingham Small Boat Harbor.

Section 4. Modification of Essential Air Travel District. The boundaries of the Essential Air Travel District created by Emergency Ordinance 2020-06(A) are modified to include the entire City of Dillingham including Kakanak Beach. The name of the district is changed to Essential Travel District.

Section 5. Permitted Uses. No person may enter the Essential Travel District unless that person either: 1) is traveling to Dillingham to receive non-elective medical care, or 2) is in transit and will remain within the Dillingham Airport while changing planes; or 3) lives outside city boundaries and will immediately travel from the Dillingham Airport to their place of residence via the Lake Road; or 4) lives outside city boundaries and works within the City and is traveling between their residence and their place of employment; or 5) lives outside city boundaries and obtains critical personal needs in Dillingham, traveling between their place of residence and the place of business providing critical personal needs; 6) is traveling from Dillingham; or 7) has applied for and been issued a Travel Permit by the City Manager. Persons identified in subsections 1-6 above are not required to submit a Travel Permit application.

Section 6. Airline Use. A certificated air carrier may only use or enter the Essential Travel District to provide Essential Travel Services.

Section 7. Definitions. For the purposes of this ordinance, the words and terms defined herein shall be defined and interpreted as follows:

A. "Essential Travel Services" means providing or using air transportation to or by persons permitted to travel by air to Dillingham.

B. "Essential Fisheries Services" means maintenance, operation, and supply of fish processing facilities and commercial fishing vessels including housing persons employed in fish processing and commercial fishing and transporting and launching commercial fishing vessels by persons who have been issued a Travel Use Permit.

C. "Critical Personal Needs" means a person who is:

1. a Dillingham resident who left Dillingham before March 27, 2020, is returning to Dillingham and who agrees to quarantine for 14 days upon arrival.
2. traveling to Dillingham to receive required medical care.
3. traveling to Dillingham to purchase groceries or fuel.
4. traveling to the Dillingham Post Office.
5. traveling to the Dillingham branch of Wells Fargo Bank or Keybank.

D. "Commercial Fishing Vendor" means a person who has or is required to have a City of Dillingham business license, and is providing services or supplies to a commercial fishing vessel or a fish processing facility. All Commercial Fishing Vendors must sign an acknowledgement of receipt of the City of Dillingham Harbor, Dock and Commercial Fishing Vendor rules.

Section 8. Travel Use Permits. A Travel Use Permit ("Permit") may be issued at the discretion of the City Manager provided the applicant provides sufficient information to lead the city manager to reasonably conclude: 1) the person is identified as a critical infrastructure worker in the Alaska Essential Services and Critical Workforce Infrastructure Order dated April 10, 2020 and is using property within the Essential Travel District or the Fisheries Related Use District for Essential Travel Services or Essential Fisheries Services or 2) the person is using property within the Essential Travel Services District for Critical Personal Needs or 3) the person is a Commercial Fishing Vendor. The City Manager may condition issuance of a Permit on compliance with quarantine requirements of this ordinance and City of Dillingham Harbor, Dock and Commercial Fishing Vendor Rules.

Section 9. Permit Application. Applications for a Travel Use Permit shall be submitted by electronic mail or facsimile to the Dillingham Emergency Operations Center travelpermit@dillinghamak.us, fax number 907-842-2060 using an application form prepared by the City. A decision shall be made within 48 hours after the application is submitted. Vessel owners may submit a single application to cover the vessel, captain and all crew members provided they are all identified by name on the application.

Section 10. Appeal. Any denial of a Permit shall be in writing and state the reasons therefore. Denials of a Permit by the city manager may be appealed to the Mayor by submitting a written notice of appeal. The Mayor's decision on appeal shall be the final city action on the application.

Section 11. Prohibited Use. All property and structures within the Essential Travel District may only be used for purposes of providing Essential Travel Services and accessory uses for Essential Travel Services. All other uses within the Essential Travel District are prohibited.

Section 12. Compliance with Harbor, Dock and Commercial Fishing Vendor Rules. All persons shall comply with the City of Dillingham Harbor, Dock and Commercial Fishing Vendor Rules.

Section 13. Compliance with Health Mandates. All persons shall comply with all requirements of Health Mandate 17, Health Mandate 10, Health Mandate 11 and Health Mandate 12 as in effect on April 30, 2020. This requirement shall survive any subsequent changes to or suspensions of Health Mandates 10, 11, 12 or 17.

Section 14. Finding of Probable Cause. There is probable cause to believe that the circumstances set forth in this Ordinance mean any delay in seeking a state-ordered or judicially-ordered quarantine would pose a clear and immediate threat to public health such that a limited quarantine of a group of individuals is the least restrictive alternative and is necessary to prevent, reduce or limit the spread of the corona virus within Dillingham.

Section 15. Mandatory Quarantine. In addition to the limitations on use of property within the Essential Service District and Fisheries Related Use District set forth above, this ordinance imposes a fourteen day self-quarantine on the following identified group of individuals (“Quarantine Group”):

A. Any person required to quarantine by Health Mandate 10 or Health Mandate 17 who has not completed their quarantine immediately prior to arrival in Dillingham shall quarantine within the Fisheries Related Use District. Time spent in quarantine on a vessel or at an employer designated and supervised quarantine site immediately prior to arrival in Dillingham after initially entering Alaska shall be credited towards completion of the required quarantine.

B. Any person traveling to Dillingham for Critical Personal Needs as defined in Section 8(C)(1) shall quarantine at their place of residence.

C. Any Commercial Fishing Vendor who has violated the Dillingham Harbor, Dock, and Commercial Fishing Vendor rules shall quarantine within the Fisheries Related Use District.

Section 16. Court Hearing. Any individuals in the Quarantine Group may request a court hearing to challenge the limitations imposed by this order within forty-eight hours after their arrival in Dillingham or being first subject to the quarantine provisions of this ordinance using procedures set forth in AS 18.15.385(f), (g) and (h) incorporated herein by reference.

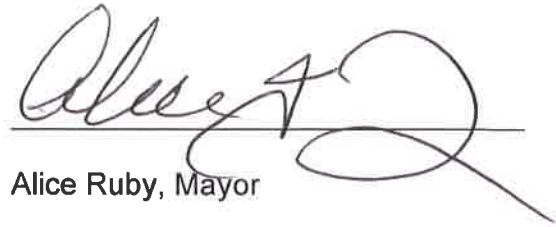
Section 17. Enforcement. Violations of this Emergency Ordinance shall be a Minor Offense. In accordance with AS 29.25.070(a), citations for violation of this ordinance may be disposed of as provided in AS 12.25.195 through 12.25.230, without a court appearance, upon payment of a one-thousand dollar (\$1,000) fine, plus the state surcharge required by AS 12.55.039 and 29.25.074. Fines must be paid to the court. The Alaska Court System’s Rule of Minor Offense Procedures applies. This fine may not be judicially reduced. Each day of violation shall be considered a separate offense.

Section 18. Code Provisions Superseded. This ordinance supersedes any inconsistent ordinances, rules or regulations of the City of Dillingham including, but not limited to Section 18.20.040 procedures for changing land use districts. Chapter 18.44 of the Dillingham Municipal Code shall not apply to buildings, structures, uses and lots regulated by this emergency ordinance.

Section 19. Effective Date. This ordinance is effective April 30, 2020 at 11:59 p.m. and shall continue in effect until June 29, 2020 unless extended by action of the city council. The adoption of this ordinance shall not in any manner affect any prosecution for violations of Emergency Ordinance 2020-06(A) committed prior to the effective date hereof.


PASSED and ADOPTED by a duly constituted quorum of the Dillingham City Council
on April 30, 2020.

SEAL:



Alice Ruby, Mayor

ATTEST:



Lori Goodell, City Clerk