

CITY OF DILLINGHAM, ALASKA

EMERGENCY ORDINANCE NO. 2020-10(A)

AN EMERGENCY ORDINANCE OF THE DILLINGHAM CITY COUNCIL MANDATING HYGENIC STANDARDS FOR THE USE OF CITY FACILITIES AND PROPERTY TO FACILITATE SUSTAINABLE ECONOMIC OPENING

BE IT ENACTED BY THE DILLINGHAM CITY COUNCIL:

Section 1. Legislative findings.

The legislative findings contained in Emergency Ordinance 2020-07 Section 1 numbered 1-46 are adopted by reference as if fully set forth herein. In addition Council makes the following legislative findings:

47. As of May 5, 2020, Dillingham still had 0 reported cases of COVID-19.

48. As of May 5, 2020, there had been 371 reported cases of COVID-19 in the State of Alaska.

49. As of May 5, 2020, the number of confirmed cases of COVID-19 infections in Oregon, Washington and California was:

California - 54,937

Oregon - 2,759

Washington - 15,594

50. It is the goal of the city to promote sustainable "opening of the economy".

51. Unrestricted use of city property and facilities is likely to result in unhygienic practices and, in turn, COVID-19 outbreaks, which would require complete closure of the facilities and result in significant economic loss.

51. To ensure that city property and facilities remain available for public use and to ensure that economic activity is sustainable, restrictions on the use of city property and facilities to ensure their continued use are desirable.

52. To further federal, state, and city goals of "opening the economy" and ensuring that it can remain open, the city council has determined that short-term use restrictions are necessary.

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 and the City's authority to regulate use of public facilities such as streets and highways and the Dillingham Small Boat Harbor.

Section 4. Classification. This is an emergency non-code ordinance.

Section 5. Use of City Facilities Restricted for Health and Safety of All Users.

A. No person may use any city facilities, including, but not limited to, all city port facilities governed by DMC 2.42, unless the person:

1. Does not present with any symptoms of COVID-19; and
2. Has completed any required quarantine immediately prior to arrival in Dillingham; or
3. Has completed any required quarantine while in the Dillingham census area; or
4. Is using city facilities to leave Dillingham to complete their required quarantine outside the City; and
5. Has obtained a negative test result on a Sars-Covid 2 PCR, antibody or antigen test within 72 hours prior to entry to Dillingham from outside the Dillingham census area.

B. It is unlawful for a person to aid, abet, incite, compel, or coerce the doing of an act forbidden under subsection A. of this section or to attempt to do so; such act shall be deemed a violation of subsection A.

C. An organization shall be deemed to have violated this section if the violation was committed by or with the knowledge of any person with a fiduciary relationship to the organization or other members of the organization or where such relationship would exist if there were other members of the organization and specifically includes any officer, director if a corporation, member or manager of an LLC, partner in a partnership, and any person holding 10% or more of the equity or control of the organization.

D. Penalties and Remedies.

1. Violation of subsection A. of this section constitutes criminal trespass upon city property, in violation of AS 11.46.330 and may be charged as such provided:
 - a. that notice against trespass under this section is personally communicated to a person so charged by a city official, including any city police officer; or
 - b. that notice that violation of A. of this section constitutes criminal trespass upon city property is given by posting in a reasonably conspicuous manner under the circumstances; or
 - c. for vessel owners or captains, that notice that violation of A. of this section constitutes criminal trespass upon city property is given through any

method of communication or transmission customarily use by mariners and of which mariners have a duty to remain informed, such as published notices to mariners.

2. In addition to any remedy or penalty, except those set forth in subsection D.1. and D.3. which shall not be cumulative, violation of this section, provided that notice described in subsection D.1. has been given, shall be chargeable as a criminal violation of municipal and punishable upon conviction by:
 - a. up to 10 days in jail and a \$1,000 fine if the offender is a natural person, or
 - b. Up to a \$10,000 fine and forfeiture of any instrument or property used in the commission of the offense if the offender is an organization.
3. In addition to any remedy or penalty, except those set forth in subsection D.1. and D.3. which shall not be cumulative, violation of this section, provided that notice described in subsection D.1 has been given, may be remedied, following an administrative hearing, by:
 - a. A civil fine of not more than \$1,000 if the violator is a natural person or \$10,000 if the violator is an organization;
 - b. Forfeiture of any instrument or property used in the commission of the offense; and
 - c. If the violator is an organization, forfeiture of any profits or benefits the violator obtained in connection with or proximately related to the violation, including, but not limited to, any fish caught or obtained obtained in connection with or proximately related to the violation.
4. A natural person found to have violated this section shall be placed on the denied services list established by DMC 4.40.010 and shall remain on such list for 365 days for violation if this section.
5. An organization found to have violated this section, and any vessel belonging to the organization at the time of the violation, shall be placed on the denied services list established by DMC 4.40.010 and shall remain on such list for five years for violation if this section.
6. If, three or more citations for violation of this section are issued to three or more separate natural persons and/or organizations within any consecutive seven-day period, the port director, pursuant to DMC 2.42.030.B. shall declare all port facilities closed for a period of 14 days.

E. Affirmative Defense & Exceptions:

1. It shall be an affirmative defense to any charge or penalty related to violation of this section that a test described in A.5. was not reasonably available in the city and in any location in which the person was in the 72 hours prior to arriving in the city.
2. Subsections A and B shall not apply to any agent or employee of the federal or state governments in the course of executing official duties.
3. Subsections A and B shall not apply to bona fide medical professionals in the course of executing professional duties.

F. Definitions & Standards

For the purpose of this sections, the following definitions shall apply:

“aid, abet, incite, compel, or coerce” shall include any direction, instruction, or duty imposed by an employer, principal, or person engaging a contractor upon an employee, agent, or contractor.

“Areas where COVID-19 is circulating” includes all municipalities which, in the previous 18 days, have confirmed any new cases of COVID-19.

“Not reasonably available” means that

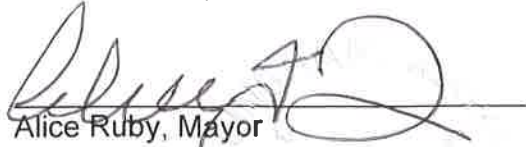
- (i) no testing facilities or tests are available in the city or in any location in which the person was in the 72 hours prior to arriving in the city; or
- (ii) the fee for testing exceeds four times the regular advertised fare for individual air transportation between Anchorage and the City of Dillingham; or
- (iii) existing state restrictions restrict the person from obtaining a test, if and to the extent state testing guidelines and restrictions allow for the testing of asymptomatic persons in high-consequence settings (e.g., people coming in to remote communities from areas where COVID-19 is circulating).

“Organization” has that meaning given by AS 11.81.900(43).

“Remote communities” shall include all communities within the Dillingham census area.

Section 6. Effective Date. This ordinance shall go into effect at 11:59 pm on May 11, 2020 and remain in effect until July 10, 2020.

PASSED and ADOPTED by the affirmative vote of all the Dillingham City Councilmembers present or the affirmative vote of four Dillingham City Councilmembers, whichever is less, on May 8, 2020.


Alice Ruby, Mayor

[SEAL]

ATTEST:


Lori Goodell, City Clerk