

**ORDINANCE NO. 11
(SERIES OF 2020)**

AN EMERGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO, ADOPTING A PUBLIC HEALTH ORDER OF THE CITY OF ASPEN, COLORADO FOR THE PROMOTION OF HEALTH AND SUPPRESSION OF DISEASE TO SET A MANDATORY CLOSURE TIME FOR ALL BUSINESSES WITHIN THE CITY OF ASPEN AND TO AMEND AND READOPT REQUIREMENTS FOR FACE COVERINGS WITHIN THE CITY OF ASPEN AND AMENDING TITLE 5 AND TITLE 14 OF THE CITY OF ASPEN MUNICIPAL CODE.

WHEREAS, the City of Aspen (the “City”) is a legally and regularly created, established, organized and existing municipal corporation under the provisions of Article XX of the Constitution of the State of Colorado and the home rule charter of the City (the “Charter”); and

WHEREAS, Section 4.11 of the Charter authorizes the City Council to enact emergency ordinances for the preservation of public property, health, peace, or safety upon the unanimous vote of City Council members present or upon a vote of four (4) Council members, whichever is less; and

WHEREAS, the City of Aspen declared a local disaster emergency on March 12, 2020 pertaining to the occurrence or imminent threat of widespread or severe damage, injury or loss of life or property resulting from COVID-19; and

WHEREAS, the City of Aspen commenced and continues to support crisis response efforts, through both personal and other resources; and

WHEREAS, pursuant to State and Local Public Health Orders, businesses have been allowed to open to the public under strict guidelines for the health and safety of the public; and

WHEREAS, the Centers for Disease Control and Prevention recommends wearing face coverings in public settings to prevent the spread of COVID-19.

WHEREAS, the City of Aspen City Council previously, via Resolution 40 (Series of 2020), amended and renewed via Resolution No. 43 (Series of 2020), and renewed again via Resolution No. 54 (Series of 2020), issued a public health order requiring individuals to wear face coverings in public places, but that many members of the public are not adhering to the requirement of wearing a face covering and businesses have been allowing individuals to enter without face coverings;

WHEREAS, failure of individuals and businesses to comply with public health guidelines can jeopardize the health of the community as a whole and could require the reinstatement of stay at home orders and the re-closing of all businesses leading to devastating economic impacts; and

WHEREAS, the City Council has determined that it is necessary to declare an emergency for the preservation of public health, peace, and safety to amend provisions within the City

of Aspen Municipal Code that would allow the immediate suspension of a license to conduct business within the City of Aspen if a business has been deemed to have violated any duly issued order, regulation or law of the Federal, State or Local government; and

WHEREAS, the City Council finds that it is appropriate and in the interests of the public health, safety, and welfare and would further protect property and civil order, for the City Council to adopt an Emergency Ordinance and Public Health Order requiring all businesses within the City of Aspen to be closed at a certain, specific time each night, and requiring face coverings in public places in the City of Aspen and imposing penalties on businesses who permit individuals to enter without face coverings.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ASPEN CITY THAT:

Section 1.

The City of Aspen City Council hereby adopts the following public health order: All retail, restaurant and bar businesses, with the exception of any business that distributes gasoline through outdoor pumps and hotel room service, within the City of Aspen shall be closed to the public from 12:00 o'clock, midnight until 5:00 a.m. No customer or patron of any business may remain on the premises after 12:00 o'clock, midnight until the business reopens.

Effective Date and Time, Limitations and Area.

The Public Health Order set forth in this Section 1, will become effective at 6:00 a.m., July 3, 2020, unless otherwise specifically provided for herein, and will remain in effect until August 25, 2020. This Order is effective within the entirety of the territory of the City of Aspen, Colorado.

Penalties:

Any business open to the public that violates the terms of this Public Health Order is subject to the suspension or revocation of its liquor or business license pursuant to Sec. 5.04.065 and Sec. 14.08.140 of the City of Aspen Municipal Code.

Section 2:

The City of Aspen City Council hereby adopts the following public health order requiring face coverings in public places within the City of Aspen:

Section 2.1. Definitions.

Face Covering shall mean a uniform piece of material that securely covers a person's nose and mouth and remains affixed in place without the use of one's hands.

Section 2.2. Face Coverings required.

All persons shall wear Face Coverings:

- a. when entering and while inside of a place of business or mode of transportation open to the public, with the exception that individuals who have entered a restaurant or bar open pursuant to Pitkin County or State regulations may remove face covering as allowed by such regulations, and
- b. in such other indoor or outdoor places where persons are unable to maintain safe social distancing (six or more feet separation for a period of more than ten minutes) from others not of their own household.

Section 2.3. Exceptions.

Nothing herein shall require the wearing of face coverings by the following persons:

- a. Persons under the age of two years; and
- b. Persons for whom a face covering would cause impairment due to an existing health condition.
- c. Persons working in a professional office who do not have any face-to-face interactions with the public or co-workers.

Section 2.4: Requirements for Businesses Open to the Public.

- a. No business open to the public shall permit any individual not wearing a face covering to enter or remain in the business unless that individual is excepted from wearing a face covering pursuant to section 2.3, above. Businesses that choose to offer masks to customers prior to entering must provide new, clean or otherwise previously unworn masks.
- b. Restaurants may allow individuals to remove their face coverings once the individual is seated at a table for dining. The individual must wear the face covering any time he or she is not seated at their table.
- c. Any business open to the public that permits an individual to enter or remain in the business without a required face covering is subject to the suspension or revocation of its business or liquor license pursuant to Sec. 5.04.065 and Sec. 14.08.140 of the City of Aspen Municipal Code as well as the penalty provisions contained in section 2.8 of this public health order.

Section 2.5: General Information for all Persons.

Pursuant to federal Centers for Disease Control guidance, the public is strongly encouraged to wear cloth Face Coverings that:

- a. fit snugly but comfortably against the side of the face;
- b. are secured with ties or ear loops;
- c. include multiple layers of fabric;
- d. allow for breathing without restriction; and
- e. are able to be laundered and machine dried without damage or change to shape.

Section 2.6. Effective Date and Time, Limitations and Area.

The Public Health Order set forth in this Section 2, will become effective at 6:00 a.m., July 3, 2020, unless otherwise specifically provided for herein, and will remain in effect until August 25, 2020. This Order is effective within the entirety of the territory of the City of Aspen, Colorado.

Section 2.7. Most Restrictive Standard Controls.

To the extent any State and/or Federal orders or laws are more restrictive than what is set forth herein, such orders control.

Section 2.8. Penalties.

Failure to comply with this Section 2 is subject to a penalty of \$50 for the first offense, \$250 for the second offense and a mandatory court appearance for any subsequent offense with the penalties contained in Section 1.04.080, of the City of Aspen Municipal Code, including up to a \$2,650 fine and one-year imprisonment or both per day for each violation.

Section 2.9. Previous Resolutions.

This Section 2 shall supersede Resolution No. 40, Series of 2020, as well as Resolutions No. 43 and 54, Series of 2020, upon the effective date set forth in Section 2.6, above.

Section 3.

Title 5, Chapter 4, of the Aspen Municipal Code is hereby amended to add the following:

Sec. 5.04.065. – Emergency Suspension or Revocation of City license to sell.

Any license required pursuant to Sec. 5.04.050 and issued pursuant to Sec. 5.04.060, may be suspended or revoked by the City Manager and the City Council as set forth herein:

- a) Where the City Manager has probable cause to believe and finds that a licensee has been guilty of gross negligence or a deliberate and willful violation of any applicable law or regulation or that the public health, safety or welfare imperatively requires emergency action and incorporates such findings in an order, she may temporarily or summarily suspend the license pending proceedings for suspension or revocation which shall be promptly instituted and determined. The City Manager

may delegate her authority granted pursuant to this Section to one or more individuals who through a majority action may issue the order of suspension.

- b) The temporary suspension of a license without notice pending any prosecution, investigation, or public hearing shall be for a period not to exceed fifteen (15) days.
- c) Upon the suspension of a license pursuant to paragraph (a) above, notice of such emergency suspension shall be hand delivered to the manager of the premises as set forth in the License issued by the City and posted upon the door of the premises that are defined in the License issued by the City. Such notice shall set forth the date of the hearing before the City Council, which shall be at the earliest possible date following notice of suspension.
- d) At a hearing conducted by City Council pursuant to Rules set forth in the Title 5, Chapter 4, or the State Liquor Code, the City Council may, based on all evidence submitted at the hearing, terminate the suspension, extend the suspension or revoke the license of the business.

Section 4.

Title 5, Chapter 4 and Chapter 8, of the Aspen Municipal Code is hereby amended to change all references contained therein to C.R.S. Title 12, arts. 46, 47 and 48, to the appropriate section or sections set forth in C.R.S. Title 44, arts. 3, 4 and 5.

Title 5, Chapter 16, of the Aspen Municipal Code is hereby amended to change all references contained therein to C.R.S. Title 12, arts. 43.3 and 43.4, to the appropriate section or sections set forth in C.R.S. Title 44, arts. 11 and 12.

Section 5:

Title 14, Chapter 8, of the Aspen Municipal Code is hereby amended to add the following:

Sec. 14.08.140 Suspension and Revocation of Business License

Where the City License Officer has probable cause to believe and finds that a licensee has been guilty of gross negligence or a deliberate and willful violation of any applicable law or regulation or that the public health, safety or welfare imperatively requires emergency action and incorporates such findings in its order, he may temporarily or summarily suspend any license for the privilege of conducting a business trade or profession regulated and controlled under the police authority of the city, for a period not exceeding fifteen (15) days, pending proceedings for suspension or revocation which shall be promptly instituted and determined. Upon issuance of such suspension order, the business operating pursuant to the license suspended shall cease all business operations. Following issuance of such suspension order, the City License Officer or his designees shall set a hearing for consideration of removing the suspension, extending the suspension or revoking the license. The City License Officer may delegate his

authority granted pursuant to this Section to one or more individuals who through a majority action may issue the order of suspension and review the suspension at a hearing.

This section shall be in addition to the other penalties specified in this chapter and to the other penalties specified in the chapter, article or regulation pertaining to the particular license sought.

Section 6. Emergency Declaration

It is hereby declared that, in the opinion of the City Council, an emergency exists; there is a need for the preservation of public property, health, peace, or safety of the City of Aspen, its residents, and guests; and, this ordinance and public health order adopted as an emergency ordinance provides the protection of the health, peace and safety of the citizens of the City of Aspen.

Section 7. Publication.

The City Clerk is directed that publication of this ordinance shall be made as soon as practical and no later than ten (10) days following final passage.

Section 8. Severability.

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional in a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and shall not affect the validity of the remaining portions thereof.

Section 9. Existing Litigation.

This ordinance shall not have any effect on existing litigation and shall not operate as an abatement of any action or proceeding now pending under or by virtue of the ordinances amended as herein provided, and the same shall be construed and concluded under such prior ordinances.

INTRODUCED AND READ as provided by law as an emergency ordinance by the City Council of the City of Aspen on the 30th day of June 2020.

Torre, Mayor

ATTEST:

Nicole Henning, City Clerk

FINALLY adopted, passed and approved this 1st day of July 2020, by

- the unanimous vote of all City Council members present; or
- a vote of four (4) council members.

Torre, Mayor

ATTEST:

Nicole Henning