



Legislation Text

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CITY of ALBUQUERQUE
TWENTY FOURTH COUNCIL

COUNCIL BILL NO. F/S O-20-4 ENACTMENT NO. _____

SPONSORED BY: Pat Davis

ORDINANCE

F/S Updating "Civil Emergency Powers," Sections 2-9-1-1 Through 2-9-1-8, Of The Revised Ordinances Of Albuquerque, And "Office Of Emergency Preparedness", Section 2-9-2-1 Through 2-9-2-2 (Davis)

BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF ALBUQUERQUE:

SECTION 1. The City's code of ordinances addressing Civil Emergency Powers is updated as follows:

"PART 1: CIVIL EMERGENCY POWERS

§ 2-9-1-1 DEFINITIONS.

For the purpose of §§ 2-9-1-1 et seq. the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BOMB. Any can, bottle, box or other container, having therein a chemical agent or a combination of chemical agents or other substances with a means installed to activate such substances which when activated will cause fire or explosion.

CIVIL EMERGENCY.

(1) A riot. Any use of force or violence, or any threat to use force or violence, if accompanied by the immediate power of execution, which threatens to result in acts described in division (4) below by three or more persons acting together, and without authority of law, which cannot be controlled or stopped under existing conditions and authority, is a riot.

(2) Unlawful assembly consisting of three or more persons assembling together with intent to do any unlawful act described in division (4) below with force or violence against the person or property of another, and who make any overt act to carry out such unlawful purpose, or who do a lawful act in an unlawful, violent or tumultuous manner, which cannot be controlled or stopped under existing conditions or authority.

(3) A natural disaster or a human-caused calamity, including but not limited to flood, conflagration, cyclone, tornado, earthquake, technological disruption, cyberattack or explosion occurring within or affecting property within the city limits of the city which endangers life and property to such extent that extraordinary measures must be taken to protect the public health, safety and welfare.

(4) Unlawful activities, such as looting, arson, fire bombing, sniping, interference with emergency vehicles, widespread criminal damage to property, which in the opinion of the Mayor based upon consultation with the Chief of Police cannot be controlled nor stopped under existing conditions and authority without unduly further endangering life or property.

CURFEW. That period of time as declared by the Mayor during which no person or persons shall be upon the public streets, sidewalks, grounds or semi-public property either on foot or in vehicles of any type within the city, except, however, that persons authorized by the Mayor by administrative order shall not be subject to the curfew.

MAYOR. The Mayor of the city or his designated representative.

MOLOTOV COCKTAIL. A bottle or other type container, containing gasoline or any other inflammable matter to which has been inserted or attached a fuse type wick or any similar contrivance.

PUBLIC HEALTH EMERGENCY. An actual or imminent outbreak, or reasonable threat of an actual or imminent outbreak, of any infectious disease that presents a threat to the health or safety of the residents of the City, or threatens to unreasonably strain the medical or emergency service resources available in the City.

§ 2-9-1-2 BOMBS OR MISSILES PROHIBITED.

No person shall make, carry, possess or use any type of Molotov Cocktail, gasoline or any other type of bomb within the corporate limits of the city.

§ 2-9-1-3 MAYORAL PROCLAMATION OF CIVIL EMERGENCY; EMERGENCY POWERS.

Whenever the Mayor shall, after consultation with the Director of the City Office of Emergency Management, find that a civil emergency exists as defined herein and that invocation of the

extraordinary powers conferred herein is necessary to ensure or to restore the public peace, he shall forthwith proclaim in writing the existence of such emergency. Upon such determination the Mayor is hereby empowered to invoke any or all of the following provisions:

(A) To declare hours of curfew upon all or any portion of the city thereby requiring all persons in such designated curfew areas to forthwith remove themselves from the public streets, alleys, parks or other public or semi-public places. The curfew shall be declared by proclamation which shall be delivered to the Chief of Police, who shall see that copies thereof are delivered to all news media within the city and who shall also use public address systems to notify the public of said proclamation and curfew hours and warn the public that violation of said curfew constitutes a misdemeanor and violators are subject to arrest.

(B) To close any and all streets, alleys and other public ways in the city to the public whenever it is necessary for the preservation of life and property and the maintenance of law and order.

(C) Order the closing of all retail package liquor stores and outlets.

(D) Order the closing of all bars and other establishments selling intoxicating liquor or beer by the drink.

(E) Order the discontinuance of selling, distributing or giving away gasoline or other liquid flammable or combustible products in any container other than a gasoline tank properly affixed to a motor vehicle said sale to be limited to not more than one gallon per motor vehicle, or in the alternative, order the closing of gasoline stations and other establishments, the chief activity of which is the sale, distribution or dispensing of liquid flammable or combustible products.

(F) Order the discontinuance of selling, distributing, dispensing or giving away of any firearms or ammunition of any character whatsoever, or in the alternative, order the closing of all establishments or portions thereof where arms and/or ammunition are kept for sale or distribution.

(G) Issue such other orders as are imminently necessary for the protection of life and property.

§ 2-9-1-4 MAYORAL PROCLAMATION OF PUBLIC HEALTH EMERGENCY; EMERGENCY ORDERS.

Whenever the Mayor shall, after consultation with the Director of the City Office of Emergency Management, find that a public health emergency exists as defined herein and that invocation of the extraordinary powers conferred herein is necessary to help preserve and maintain the health, safety, and welfare of the general public, he shall forthwith proclaim in writing the existence of

such emergency. Upon such determination the Mayor is hereby empowered to invoke any or all of the following provisions:

- (A) To close any and all streets, alleys and other public ways in the city to the public whenever it is necessary for the preservation of life and public health and safety.
- (B) Order retailers to limit the kinds and quantities of medical, health and sanitation items that a business may sell per customer per day.
- (C) Order the closing of places of mass assembly, including but not limited to theaters, clubs, or performances intended for a public audience, and athletic venues.
- (D) Order the closing of places of institutional childcare or education such as daycares, preschools, and private educational institutions.
- (E) Order that places of private employment take reasonable measures (as determined by each employer) to minimize any exposures to infectious diseases or health risks to employees and customers by, for example, partial or full closures, or authorizing non-essential employees to work from home or take leave, or deploying social distancing protocols.
- (F) Cancel city sponsored events and gatherings, cancel or impose limitations or special protocols for the provision of City services and the use of city facilities, and authorize the redistribution or rededication of city resources and budgetary appropriations, not to exceed \$1,000,000 unless otherwise approved by the City Council, as necessary to help address or combat the proclaimed emergency.
- (G) Enter any agreements authorizing the use of City owned property by third parties, or agreements for the City's use of non-city owned property, outside of the usual requirements for City real property transactions prescribed by ROA 1994 § 5-2-1 et. seq. as necessary to help address or combat the proclaimed emergency.
- (H) Issue such other orders as are imminently necessary for the protection of life and property throughout the duration of the emergency, including any provisions above that have not been previously invoked.

§ 2-9-1-5 PUBLICATION OF ORDERS.

The Mayor shall immediately deliver a copy of the declaration and all orders issued pursuant to authority contained in § 2-9-1-3 or § 2-9-1-4 to the Albuquerque Police Department, Albuquerque Fire and Rescue, all major media outlets serving the City, and the City Councilors. The Mayor shall also post a copy of such orders to the City's website, distribute them through the City's primary social media accounts, and take such additional reasonable measures necessary

to inform impacted persons and businesses of the emergency declaration and associated emergency orders.

§ 2-9-1-6 DURATION AND EXTENSION OF EMERGENCY PROCLAMATION.

(A) Any civil emergency proclaimed in accordance with the provisions of §§ 2-9-1-1 et seq. shall take effect immediately, and terminate after 48 hours from the issuance thereof, or may terminate sooner upon the issuance of a proclamation by the Mayor determining an emergency no longer exists, whichever occurs first; provided, however, that any emergency proclamation may be sooner terminated by resolution of the City Council prior to the termination of 48 hours or may be extended by resolution of the Council as originally proclaimed or with amendments for any such additional periods of time as deemed necessary by the City Council up to a maximum of ninety (90) days per proclamation.

(B) Any public health emergency proclaimed in accordance with the provisions of §§ 2-9-1-1 et seq. shall take effect immediately, and terminate upon the date set forth by the proclamation, not to exceed thirty (30) days from the issuance thereof, or may terminate sooner upon the issuance of a proclamation by the Mayor determining an emergency no longer exists, whichever occurs first; provided, however, that any emergency proclamation may be sooner terminated or amended by resolution of the City Council prior to the termination of 30 days or may be extended by any resolution of the Council as originally proclaimed or with amendments for any such additional periods of time as deemed necessary by the City Council up to a maximum of ninety (90) days per proclamation.

§ 2-9-1-7 FAILURE TO OBEY.

Every person remaining present at the place of any riot or unlawful assembly after they have been ordered to disperse by the police or any other lawful authority, or who fails to comply with any order or directive set forth pursuant to this ordinance, except those public officers and persons assisting them in attempting to disperse the same or comply with an order or directive or administer emergency services, shall be deemed guilty of a violation of §§ 2-9-1-1 et seq.

§ 2-9-1-8 NON LIMITATION OR INTERFERENCE WITH OTHER AUTHORITY

Nothing herein is intended to limit the power or authority of the Mayor with respect to the control and management of City resources and facilities that generally exists even outside the existence of a civil emergency. However, notwithstanding the emergency powers authorized herein, closures or limitations for any office or place of gathering or meeting necessary for carrying out the business of the City Council may occur only by order of the City Council.”

SECTION 2. The City's code of ordinances sections addressing the Office of Emergency Preparedness is updated as follows:

“§ 2-9-2-1 OFFICE OF EMERGENCY MANAGEMENT.

(A) There is hereby established under the executive branch of the government of the city in accordance with Section 12-10-5 NMSA 1978, an Office of Emergency Management consisting of:

(1) A Director of Emergency Management, appointed by and responsible to the Mayor of the city.

(2) Such additional professional and administrative staff as may be required to effectively carry out the city's emergency management programs.

(3) During periods of emergency, all other city officers and employees, together with those forces enrolled to aid the Office of Emergency Management, shall be considered as part of the Office of Emergency Management.

(B) The purpose of the Office of Emergency Management is to coordinate the efforts of all city agencies and employees, and non-governmental agencies in the preparation of contingency plans for any emergency endangering the lives and property of the residents of the city. It shall be the duty of the Office of Emergency Management to coordinate the development of plans for the effective employment of municipal resources to protect the lives and health of the residents of the city, and the private and public property therein from the effects of natural or human-caused disasters, including any 'civil emergency' as defined within Section 2-9-1-1, above, and any acts of war, and to coordinate the implementation of said plans during periods of emergency. Such plans shall be coordinated with those of Bernalillo County and the State Office of Emergency Preparedness.

§ 2-9-2-2 DIRECTOR OF EMERGENCY MANAGEMENT.

(A) The Director shall be the executive head of the Office of Emergency Management and shall be responsible to the Mayor for the organization, administration, and operation of the Office of Emergency Management and all of the city's emergency management programs. The Director shall coordinate the city's emergency management programs with programs of like kind placed into effect by the County of Bernalillo, private persons, and all nongovernmental agencies, and shall act as a liaison and fully cooperate with the emergency management agencies of the federal government and the State of New Mexico and its political subdivisions.

(B) Subject to approval by the Mayor, the Director shall act for the government of the city in

all matters pertaining to emergency management, including the obligation of such municipal funds as may be appropriated for emergency management purposes.

(C) The Director shall prepare and submit an annual proposed budget for the Office of Emergency Management expenditures to the Mayor.

(D) The Director shall perform such other duties as the Mayor shall prescribe.”

SECTION 3. SEVERABILITY. If any section, paragraph, sentence, clause, word or phrase of this Ordinance is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this Ordinance. The Council hereby declares that it would have passed this Ordinance and each section, paragraph, sentence, clause, word or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid.

SECTION 4. COMPILATION. Sections 1 and 2 of this Ordinance shall amend, be incorporated in and compiled as part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

SECTION 5. EMERGENCY MEASURE; EFFECTIVE DATE. This ordinance is passed and approved as an emergency measure and takes effect immediately upon publication by title and general summary.

