**CHAMBERLAIN CITY COMMISSION**

**SPECIAL MEETING**

**​March 27, 2020**

The Chamberlain City Commission held a special meeting on March 27, 2020 at 12:00 PM via teleconference.

Present: Mayor Mutziger, Commissioners Claussen, Ruhlman, Thomas and Soulek, City Engineer Greg Powell, Finance Officer Nicky Gaulke, and Police Chief Jason Handel.

Absent: None.

**First Reading Ordinance 638 – Temporary Emergency Public Health Crisis Measures**

Mayor Mutziger informed the group that we are here to review and approve the first read of an emergency ordinance drafted by the City Attorney in regards to COVID-19. It was noted that a copy of this ordinance can be accessed on the homepage of the City’s webpage at [www.chamberlainsd.net](http://www.chamberlainsd.net).

Powell stated that the City Council had given a directive to businesses with no penalties, so we are now proceeding with an emergency ordinance that does some of the same things we have already done, but also establishes penalties for noncompliance.

Powell added that this ordinance would extend the closures/partial closures until April 20th and also authorizes the Council to extend this date via motion.

Because of first and second readings and then publication, the ordinance will take effect April 9th.

The ordinance is as follows with Powell reading the NOW THEREFORE section aloud in the meeting:

**ORDINANCE NO. 638**

**A TEMPORARY EMERGENCY ORDINANCE TO ADDRESS A PUBLIC HEALTH CRISIS BY IMPLEMENTING CERTAIN MEASURES WHICH HAVE BEEN DEEMED NECESSARY TO SLOW THE COMMUNITY SPREAD OF THE VIRUS RESPONSIBLE FOR THE COVID-19 DISEASE.**

 **WHEREAS**, the City of Chamberlain (the “City”) has the authority pursuant to SDCL 9-29-1 and 9-32-1 to pass ordinances for the purpose of promoting the health, safety, morals and general welfare of the community and to do what may be necessary or expedient for the promotion of health or the suppression of disease; and

 **WHEREAS**, an outbreak of the COVID-19 disease, which is caused by the novel coronavirus SARS-CoV-2 (the “virus”), has been confirmed in more than 100 countries, including the United States; and

 **WHEREAS**, COVID-19 is a severe respiratory disease caused by the virus transmitted by person-to-person contact, or by contact with surfaces contaminated by the virus. In some cases, especially among older adults and persons with serious underlying health conditions, virus infection can result in serious illness requiring hospitalization, admission to an intensive care unit, and death; and

 **WHEREAS**, the World Health Organization (WHO), the Centers for Disease Control and Prevention (CDC), and the Secretary of the U.S. Department of Health and Human Services have declared the outbreak of the virus causing the COVID-19 disease as a public health emergency; and

 **WHEREAS**, on March 13, 2020, President Donald Trump declared a national emergency in response to the global pandemic of COVID-19; and

 **WHEREAS**, on the same day, Governor Kristi Noem, issued Executive Order 2020-04 which declared a state of emergency to exist in the State of South Dakota in response to the spread of the virus causing the COVID-19 disease; and

 **WHEREAS**, cases of infection from the virus causing the COVID-19 disease have been confirmed in the State of South Dakota, and cases of community transmission are reasonably suspected to exist; and

 **WHEREAS**, the CDC and health experts have recommended social distancing to slow the spread of the virus causing the COVID-19 disease; and

 **WHEREAS**, social distancing is a method of slowing down or stopping the spread of a contagious disease by reducing the probability of contact between infected persons and those not infected in order to minimize disease transmission; and

 **WHEREAS**, in response to the need to implement social distancing, all schools in the State of South Dakota have been closed for at least two weeks; and

 **WHEREAS**, on March 16th, the White House issued guidance recommending that gatherings of more than ten (10) people be avoided and that people avoid eating or drinking at bars, restaurants, and food courts; and

 **WHEREAS**, the guidance issued by the White House further recommended that in states with evidence of community transmission, bars, restaurants, food courts, gyms, and other indoor and outdoor venues where people congregate should be closed; and

 **WHEREAS**, many states and communities across the country have already implemented the White House recommendations by ordering all bars, restaurants, food courts, gyms, and other indoor and outdoor venues where people congregate be closed until the public health emergency is over; and

 **WHEREAS**, the failure to successfully implement social distancing will likely result in higher numbers of infected individuals and has the potential to overwhelm the capacity of the City’s and surrounding communities’ health care providers; and

 **WHEREAS**, it is important that control measures be taken to reduce or slow down the spread of the virus in order to protect the health and safety of the City’s residents, especially for seniors and those with underlying health conditions that make them particularly vulnerable to the COVID-19 disease; and

 **WHEREAS**, on March 23, 2020, Governor Kristi Noem, issued Executive Order 2020-08 outlining guidelines for all South Dakotans, for-profit and not-for-profit employers, enclosed retail businesses that promote public gatherings, and healthcare organizations as it relates to COVID-19 in the state of South Dakota (the “Executive Order”); and

 **WHEREAS**, the City Commission of the City of Chamberlain, in support of the directives of the Executive Order and CDC guidance as it relates to COVID-19 in the state of South Dakota, has found that the rules and regulations contained within this ordinance are necessary for the prevention and spread of the contagious virus causing the deadly COVID-19 disease within the City.

 **NOW THEREFORE, BE IT ORDAINED**, by the Chamberlain City Commission that:

 (1) Effective at 12:01 a.m. on Thursday, April 9, 2020, all restaurants, food courts, food service locations, coffee houses, cafes, and other similar places of public accommodation offering food for on-site consumption, are restricted to a maximum of ten (10) on-site/on-sale patrons. These businesses may also operate in order to provide take-out, delivery, curbside service, and drive-thru service. Any business continuing to operate in order to provide off-site service should implement procedures to ensure social distancing and operate in compliance with federal and state health guidance in order to prevent the spread of the virus causing the COVID-19 disease. The list of businesses partially closed by this provision may be increased by resolution of the Chamberlain City Commission. This partial closure will remain in effect through Monday, April 20, 2020.

 (2) Effective at 12:01 a.m. on Thursday, April 9, 2020, all recreational facilities, pools, health and fitness facilities and clubs, social clubs, fraternal organizations, athletic and weight training facilities, movie and live production theaters, event centers, meeting halls, and music and entertainment venues are directed to close and cease operations. The list of the business types closed by this provision may be increased by resolution of the Chamberlain City Commission. This closure will remain in effect through Monday, April 20, 2020.

 (3) Effective at 12:01 a.m. on Thursday, April 9, 2020, all bars, breweries, wineries, clubs, on-sale liquor licensees not offering food for on-site consumption (60% revenue from food sales), and on-sale malt beverage and SD wine licensees not offering food for on-site consumption (60% revenue from food sales) are directed to close. Businesses having on/off sale licenses may continue to sell liquor, malt beverages and SD wine off-sale but should implement procedures to ensure social distancing and operate in compliance with federal and state health guidance in order to prevent the spread of the virus causing the COVID-19 disease. The list of the business types closed by this provision may be increased by resolution of the Chamberlain City Commission. This closure will remain in effect through Monday, April 20, 2020.

 (4) Effective at 12:01 a.m. on Thursday, April 9, 2020, all pool halls, video game arcades, video lottery casino operations, bowling alleys, ice skating rinks, and other similar recreational or entertainment facilities are directed to close and cease operations. The list of the business types closed by this provision may be increased by resolution of the Chamberlain City Commission. This closure will remain in effect through Monday, April 20, 2020.

 (5) The prohibitions and closures in this order do not apply to the following:

(a) Places of public accommodation that offer food and beverages for off-site consumption, including grocery stores, markets, retail and service businesses that offer food, convenience stores, pharmacies, drug stores, and food pantries, other than any portion of such business which would be subject to the requirements of paragraph (1).

(b) Hardware and supply stores.

(c) Room service in hotels.

(d) Health care facilities, residential care facilities, congregate care facilities, and correctional facilities.

(e) Crisis shelters, homeless shelters, churches, soup kitchens, or other similar institutions.

(f) Any emergency facility necessary for the response to the current public health emergency or any other community emergency or disaster.

(g) Official meetings of the city, schools, county, state, or federal government.

(h) Any other business type or service established by resolution of the Chamberlain City Commission.

 (6) This ordinance shall remain in effect until Monday July 6, 2020, at which time it shall be automatically repealed without further action of the Chamberlain City Commission unless amended, suspended, or extended by resolution of the Chamberlain City Commission. Any dates identified in the ordinance for closures to automatically end may be extended within the period covered by this ordinance by a resolution of the Chamberlain City Commission.

 (7) Each person in violation of this ordinance shall be guilty of a Class 2 misdemeanor, and shall be subject to a $500 penalty. Notwithstanding the previous sentence, any violation of this emergency ordinance by any business licensed under SDCL Title 35 and Title XI, shall, following a hearing as required by SDCL 35-2-11.1, may at the discretion of the Commission result in a recommendation to the South Dakota Secretary of Revenue that such business’s license be suspended or revoked for such violation. In the event that the hearing requirement of SDCL 35-2-11.1 is waived or otherwise suspended pursuant to gubernatorial action pursuant to SDCL 34-48A-5, then such recommendation may be made without a hearing. Each day a violation of this ordinance occurs is considered a separate offense.

 **BE IT FURTHER ORDAINED**, that, pursuant to SDCL 9-19-13, this ordinance is necessary for the immediate preservation of the public peace, health, safety, and welfare of the City and shall become effective immediately upon passage and publication.

 Dated this 2nd day of April, 2020.

**CITY OF CHAMBERLAIN, SOUTH DAKOTA**

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Chad Mutziger, Mayor

ATTEST:

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Nicole Gaulke, Finance Officer

(SEAL)

First Reading: March 27, 2020

Second Reading & Adoption: April 2, 2020

Publication: April 8, 2020

Effective Date: April 8, 2020

Published once at the approximate cost of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

Commissioner Ruhlman stated that she wants to elaborate that the effective date isn’t until April 9 because we have to do both a first and second reading and then it would take effect the day it is published in the official newspaper so that is the quickest we can get this done.

Commissioner Soulek stated that we address fraternal organizations and that would include Thrivent, Modern Woodman, Kiwanis, etc.

Powell stated that it isn’t directed at forcing them to shut down, it’s aimed at their group meetings, activities, events, and whatever organizational gatherings that they may have. Powell will speak with the City Attorney about how to be more descriptive with this.

Commissioner Soulek also stated that he has been speaking without house representative Rebecca Reimer about clarification on what we as the City can do. She spoke with Yvonne Taylor of the SD Municipal League and they also are not sure what we can even do as a City. They are hoping to get more clarification on Monday.

Commissioner Ruhlman pointed out the City Attorney drafted this ordinance.

Powell stated that there will be no clarification any time soon.

Commissioner Soulek stated that he will vote against it then.

Commissioner Claussen asked that we consider changing the wording on the penalty section to say that it is up to a $500 penalty rather than just a $500 penalty. He added this gives us the option to determine whether it is more severe versus a minor charge.

Brooke McDonald stated that we are now extending this to possibly July 6th and she only has an on-sale license. She asked if she could get a temporary off-sale license.

Nicky Gaulke said that the State currently does not allow for on-sale mixed drinks or mixers to walk out the door or be delivered but Yvonne with the Municipal League is working on possibly getting the state to allow something temporary. Gaulke added that we could look into getting an off-sale mat beverage license for Charlys.

Merrill Ellis asked if they have the 10 customers sitting dining, can they also have 3-4 sitting waiting for carry-out?

Mayor Mutziger stated that you need to limit the number of people waiting there, but they don’t count towards the 10.

John Lenz asked if he is able to keep the tanning beds open in his establishment?

Powell stated that he is unsure of the answer to that. It was noted that we are not regulating tanning beds at hair salons so we don’t think the fitness centers would be.

Lenz asked why there were not given the same opportunity as the rest of the businesses to have up to 10 people in his business?

Powell stated that we are basing this on the CDC< Presidential and Governor’s recommendations on COVID-19.

Lenz went on to state that he sold his gym in Pierre to a friend that just called him and told him that he signed up a membership for Kristi Noem and her daughter yesterday and they thanked him for remaining open.

Mayor Mutziger stated that in order for us to have any teeth in this, it has to come down from Governor Noem and he had believed that she was taking this seriously and if she’s not, then we have all been blindsided by it.

It was noted that changes can be made to this ordinance.

Lenz asked if the changes could include saying that he can stay open then and Mayor Mutziger stated that it can if its proposed by a Council member and approved.

Commissioner Soulek stated that he would like to propose that we allow up to 10 people in the fitness center an limit it to staffed hours only. He added that if he’s doing all of that, he doesn’t see why he has to close.

Changes noted to the Ordinance under section 5 which covers not closed businesses would be to add (I) for tanning facilities and (j) for fitness centers with the 10-person maximum at one time and only during staffed hours.

Commissioner Ruhlman stated that if that’s the case with the fitness center then she doesn’t understand why we closed the Bowling Dome.

Commissioner Soulek stated exactly, that he doesn’t know why we closed the Bowling Dome either. Adding that he wants to know why we are telling any business to close

Commissioner Ruhlman stated that we are basing this on the recommendations of the CDC, Presidential and Governor.

Commissioner Soulek stated that’s is a recommendation, not something we have to do.

Commissioner Claussen asked that if there are 10 people in the gym can they stay 10 feet apart and Lenz stated that yes they can, the building is 3,500 square feet. Lenz went on to state that they had a doctor in from Sanford the last two days thanking them for staying open because it helps her mental health and that she can be a better doctor because she can work out.

Commissioner Thomas stated that maybe we need to change their hours and make sure there is someone there to clean up properly. He added that there are four or five cars there at 4:30 AM on the mornings he goes to work. He thinks that if we require them to only open during manned hours where they can restrict the number of people and properly clean up then he wouldn’t see a problem with that.

Lenz was asked he could do it with manned hours only and Lenz state that it would work for them.

Commissioner Ruhlman stated that if we start making exceptions for some and not for others, then we are going to start having other businesses come in and ask for exceptions.

Commissioner Claussen stated that currently we don’t have any in Chamberlain so we could be a little lenient, but as soon as we do start having cases then we should tighten down.

Mayor Mutziger stated that he agrees with Hannah and if we wait until we have a case, we are behind the eight ball and going the wrong way. He stated that we need to make decisions and not waiting for it to happen. We are trying to be proactive and once again its going to come to a vote.

Mayor Mutziger asked Commissioner Soulek if the changes that he suggested for the ordinance include allowing tanning beds ad allowing gyms to have under 10 and staffed only and Commissioner Soulek stated that yes, that is correct.

Doctor Travis Sanger of Sanford Hospital in Chamberlain stated that he would like to clarify the comments about the fitness center and wanted to reiterate that Sanford as a whole has four Medical Doctors and four Advanced Practical Providers and are all uniformly for social isolation. We are aware of what happens if you don’t do it. The actual comment that was made was by an ob-gyn that fills in, a fabulous provider that does a great job, but she also is under the premonition that this is under the 10 or less people allowed at one time with somebody monitoring that. He added that he thinks the City is doing a great job and just to be clear that Sanford as a whole is about social distancing and Sanford is in support of the social distancing adding that the treatments and studies may work or they may not, and he doesn’t want to have to make that decision. He added that just to be clear, Sanford is on the same page of social distancing. He added that we want this to be a bad situation and not a catastrophe.

Commissioner Thomas asked about the social distancing and a maximum of 10 people, what about the local c-store where they are going in there to congregate and drink coffee. They are not distancing themselves so are we going to regulate or fine people for that?

Mayor Mutziger stated that convenience stores are places with food and are deemed as essential He is working with the Chamber to ask businesses to have their customers not linger and to do their business and move on.

Commissioner Thomas asked if we followed what other cities are doing and mayor Mutziger stated that yes, this is a pretty uniform ordinance in South Dakota.

Commissioner Ruhlman stated that Sioux Falls did this very similar ordinance yesterday.

Motion by Thomas second by Soulek, Thomas aye, Ruhlman nay, Soulek aye, Claussen aye, Mutziger nay, and approved the First Reading of Ordinance No 638 with the addition of allowing tanning beds, clarification on fraternal organizations, allowing gyms to open with max of ten people during staffed hours and to change the fine to include the words “up to” $500.

Motion by Ruhlman second by Claussen, all ayes and approved to schedule a special meeting on April 2nd at 5:30 PM.

Motion by Ruhlman second by Thomas, all ayes and approved to schedule the second reading of Ordinance No. 638 at 5:30 PM on April 2nd.

**Adjourn**

Motion by Claussen second by Ruhlman, all ayes and approved to adjourn at 12:42 PM.

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Chad Mutziger, Mayor

​Attest:

*SEAL*

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Nicky Gaulke, Finance Officer

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