

ORDINANCE NO. S2020-3

**AN ORDINANCE RESTRICTING THE SALE OF ALCOHOL BY CERTAIN
OUTLETS TO AID IN STOPPING THE SPREAD OF THE COVID-19 VIRUS DURING
THE PERIOD OF THE DECLARED EMERGENCY**

WHEREAS, the Governor of the State of New Mexico issued Executive Order 2020-004 declaring a State of Health Emergency pursuant to All Hazard Emergency Act, NMSA 1978 § 12-10-1 *et.seq.*, and the Public Health Emergency Response Act, NMSA 1978 § 12-10A-1 *et.seq.*, due to the rapid spread of the COVID-19 virus; and

WHEREAS, the New Mexico Health Secretary issued a Public Health Order on March 23, 2020 pursuant to her authority under the Public Health Act, NMSA 1978 §24-1-1 *et.seq.*, the Public Health Emergency Response Act, NMSA 1978 § 12-10A-1 *et.seq.*, and the Department of Health Act, NMSA 1978 §9-7-1 *et.seq.*, that orders the suspension of in-person operations of all business not identified as “essential business” by the Order. The Order defines essential business in a manner that requires the closure of retailers holding “dispenser licenses” for the sale of alcohol unless the business generates the majority of its revenue from the sale of food items, pet food and supplies for the maintenance of animals, and other household consumer products; and

WHEREAS, Health Secretary issued additional restrictions in the Public Health Order issued on April 6, 2020 that orders retail businesses deemed essential that are allowed to remain open limit the number customers in the retail space to 20% or less of the normal occupancy load and that customers that are waiting outside of the retail space maintain a distance of at least six feet from each other; and

WHEREAS, the Health Secretary’s April 6, 2020 Public Health Order provides that it does not “restrain or preempt local authorities from enacting more stringent restrictions that those required by the Order,” and

WHEREAS, all municipalities in New Mexico have the authority to adopt ordinances that are not inconsistent with the laws of New Mexico that provide for the safety and preserve the health of the municipality and its inhabitants pursuant to NMSA 1978 §3-17-1, and

WHEREAS, a home rule municipality in New Mexico “may exercise all legislative powers and perform all functions not expressly denied charter municipalities by general law or charter” pursuant to NMSA 1978 §3-15-13, and

WHEREAS; the City of Gallup has a significant population of homeless individuals that purchase alcoholic beverages at convenience stores, and then consume and share the alcoholic beverages with other similarly situated individuals in groups that typically do not maintain adequate social distancing and otherwise engage in behaviors that significantly increase the risk of spreading the COVID-19 virus;

THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF GALLUP THAT:

SECTION 1: TITLE:

This Ordinance shall be known as the “COVID-19 EMERGENCY ALCOHOL SALES RESTRICTIONS ORDINANCE.”

SECTION 2: DEFINITIONS:

- A. “Convenience store” means a business that sells products such as food, beverages, tobacco products, medicines, dry goods, lottery tickets, and other consumer items directly to consumers and that has a retail space of less than four thousand (4000) square feet.
- B. “Employed by” includes persons volunteering their services that do not receive a salary or other type of remuneration.
- C. “Person” means natural persons as well as business entities such as partnerships, limited liability companies, and corporations.
- D. “Retail space” means the area of an “essential business” that sells products or services directly to consumers or end users that customers are commonly allowed to enter.

SECTION 3: ALCOHOL SALES RESTRICTIONS

Convenience stores that hold a dispensers license pursuant to the New Mexico Liquor Control Act may not sell, serve, or otherwise transfer beer, wine, or any other alcoholic beverage as those terms are defined by the New Mexico Liquor Control Act, NMSA 1978 §60-3A-3, at any time on any day of the week until such time that the Governor revokes the Declaration of a Health Emergency contained in Executive Order 2020-004.

SECTION 4: PENALTIES AND ENFORCEMENT

- A. **PENALTY:** It is a misdemeanor for any person to violate any section of this ordinance and any person found guilty of violating any section of this ordinance shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).. Each day that a violation continues shall constitute a separate and distinct offense.
The provisions of a criminal penalty in this section shall not be deemed a waiver of the rights of the City to institute an appropriate administrative or judicial proceeding to restrain, correct, or abate the violation.
- B. **ENFORCEMENT:** The provisions of the ordinance shall be enforced by the issuance of a citation by any law enforcement officer, code enforcement officer, or fire marshal employed by the City. No person shall be arrested for violation of this ordinance.

SECTION 5: SEVERABILITY

If any section, sentence, clause or phrase of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

SECTION 6: EMERGENCY DECLARATION AND DURATION:

- A. The City Council finds that there is an urgent public need for this measure to become effective as soon as possible and therefore declares this Ordinance to be an emergency measure.
- B. This Ordinance shall remain effective until the Governor revokes the Declaration of a Health Emergency contained in Executive Order 2020 unless revoked sooner by the governing body of the City of Gallup.

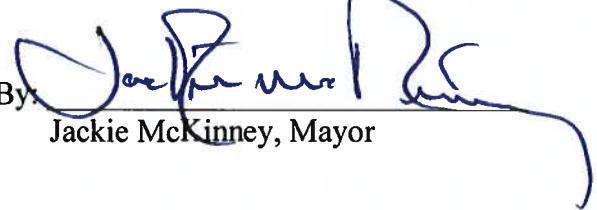
PASSED, ADOPTED AND APPROVED this 14th day of April, 2020.



ATTEST:

Alfred Abeita II, City Clerk

CITY OF GALLUP, NEW MEXICO

By: 
Jackie McKinney, Mayor

Motion made by: Councilor Palochak

Seconded by: Councilor Schaaf

Vote:
Mayor McKinney Yes
Councilor Garcia No
Councilor Schaaf Yes
Councilor Kumar Yes
Councilor Palochack Yes