



**CITY OF KEY WEST
STATE OF LOCAL EMERGENCY DIRECTIVE 2020-20
AMENDMENT 1**

WHEREAS, Novel Coronavirus Disease 2019 (COVID-19) is a severe acute respiratory illness that can spread among humans through respiratory transmission and causes symptoms similar to those of influenza and, in some cases, cause death; and

WHEREAS, Section 252.38(3)(a), Florida Statutes, gives political subdivisions the authority to declare and enact a State of Local Emergency for a period of up to seven days, thereby waiving the procedures and formalities otherwise required of the political subdivision by law; and

WHEREAS, on March 1, 2020, the Governor of Florida, Ron DeSantis, issued Executive Order Number 20-51, directing the State Health Officer and Surgeon General to declare a Public Health Emergency due to the discovery of Coronavirus Disease 2019 (COVID-19); in Florida; and on that same date, the State Health Officer and Surgeon General issued a Declaration of Public Health Emergency, stating that COVID-19 is a threat to public health in Florida; and

WHEREAS, on March 9, 2020, the Governor of declared a State of Emergency because of COVID-19; the Governor has renewed that state of emergency and it remain in effect today; and

WHEREAS, on March 15, 2020, at 3:15 p.m. the City of Key West declared a State of Local Emergency; that local state of emergency has been renewed every seven days and continue in place today; and

WHEREAS, the Centers for Disease Control (CDC) has since issued guidance entitled encouraging social distancing and maintaining a 6-foot separation between residents to slow the spread of infection and for individuals to cover their mouths and noses with a cloth face cover when around others, including when they have to go out in public, stating that “COVID-19 spreads mainly among people who are in close contact (within about 6 feet) for a prolonged period”, that “[t]he more people an individual interacts with at a gathering and the longer that interaction lasts, the higher the potential risk of becoming infected with COVID-19 and COVID-19 spreading” and that “[t]here is evidence that under certain conditions, people with COVID-19 seem to have infected others who were more than 6 feet away”; and

WHEREAS, the CDC strongly advises that reopening of communities include full observance of the social distancing, facial covering, and sanitation requirements stated in the CDC Guidelines in order to minimize the risk of a dramatic increase in infections that might overwhelm the available public health resources and require reclosure of amenities and businesses; and

WHEREAS, the CDC has issued guidance stating that “[t]he more people an individual interacts with at a gathering and the longer that interaction lasts, the higher the potential risk of becoming infected with COVID-19 and COVID-19 spreading”; that persons should “[a]void group events, gatherings, or meetings where social distancing of at least 6 feet between people who do not live in the same household cannot be maintained”; that the risk of COVID-19 spreading at events and gatherings increases with “higher risk” activities defined as “[m]edium-sized in-person gatherings that are adapted to allow individuals to remain spaced at least 6 feet apart and with attendees coming from outside the local area” and with “highest risk” activities defined as “[l]arge in-person gatherings where it is difficult for individuals to remain spaced at least 6 feet apart and attendees travel from outside the local area”; and

WHEREAS, on July 20, 2020, the State of Florida Health Officer and Surgeon General issued a Public Health Advisory stating “[a]ll individuals should wear face coverings in any setting where social distancing is not possible”, that “[a]ll individuals should follow CDC guidelines on what type of face coverings are available and should be utilized”, that “[a]ll individuals should refrain from participation in social or recreational gatherings of more than 10 people [and] [f]or gatherings of fewer than 10 people, [...] social distancing [should be maintained] and wear a face covering”; and

WHEREAS, pursuant to Section 252.46, Florida Statutes, political subdivisions are authorized and empowered to make, amend, and rescind such orders and rules as are necessary for emergency management purposes and to supplement the carrying out of the provisions of Sections 252.31-252.90, Florida Statutes, such orders and rules have full force and effect of law, and all existing laws, ordinances, and rules inconsistent with any order or rule issued under the authority of such statute shall be suspended during the period of time and to the extent that such conflict exists; and

WHEREAS, from July 24, 2020 through August 19, 2020, Monroe County implemented an emergency ordinance closing bars and food service establishments daily, county-wide, from 11:00 p.m. to 5:00 a.m., and August 19, 2020 through September 7, 2020, from 12:00 a.m. to 5:00 a.m.; and

WHEREAS, on September 25, 2020, Governor DeSantis issued Executive Order 20-244, which moved the State of Florida into Phase 3 of its reopening plan; and

WHEREAS, the Third District Court of Appeal has upheld curfews implemented as a result of COVID-19, stating that “safeguarding the life and property of its citizens is an innate responsibility of the governing body of each political subdivision of the state”, further emphasizing that “[h]ad the Governor meant to preempt local governments from imposing curfews, he could have said so”, finding that “EO 20-244 does not expressly preempt curfews by local government” and that “[n]either implied preemption nor conflict precluded [...] curfew orders.” *Miami-Dade County v. Miami Gardens Square One, Inc., et al.*, 3D20-1512, 2020 WL 6472542 (Fla. 3d DCA 2020); and

WHEREAS, the United States District Court for the Southern District of Florida has issued an opinion which states that a local government is “well within its authority to enact restrictions for the public health, and such restrictions survive preemption analysis so long as the [local government] quantifies the economic impact of each restriction, limitation or requirement on those

restaurants impacted, and explain[s] why each limitation or requirement is necessary for public health” in accordance with State of Florida Executive Order 20-244. *828 Management, LLC, et al., v. Broward County*, 2020 WL 7635169 (SD.Fla., 2020); and

WHEREAS, the restaurant industry has experienced a 20 percent reduction in sales in June 2020, a 26 percent reduction in sales in July 2020, a 12 percent reduction in August 2020, and an 11 percent increase in September 2020, as compared to 2019 sales during the same time period, based on Monroe County figures; and

WHEREAS, these losses are industry averages; and

WHEREAS, these losses reflect both government restrictions on restaurants and/or local businesses and also customers who chose not to patronize restaurants due to COVID-19; and

WHEREAS, implementation of a temporary curfew in this Emergency Directive may be limit the hours of operations of some establishments to less than the posted hours. However, of the 294 licensed food service establishments or restaurants, only 86 are open past 10:00 p.m. This equates to an impact of 29% of food service establishments between 1/2 hour to 6 hours for a maximum of 3 nights; and

WHEREAS, the impact of such curfew could result in the loss of sales for such restaurants of 14 percent compared to prior years, based on data through from June through September of 2019 and 2020, based on Monroe County figures, although the percentage is difficult to quantify as the curfew shall only be in effect for one night during December, 2020, and two nights in January, 2021; and

WHEREAS, in the past, New Year’s Eve celebrations and the celebrations surrounding that day have included gatherings of tens of thousands of people on or near Duval Street and/or celebrations and gatherings of large groups of people throughout the City of Key West, which also requires extensive preparation involving Key West Police Department and other governmental agencies for the safety of all present; and

WHEREAS, in addition to the numbers above, the City is the landlord for 8 restaurant tenants at the Key West Bight and the City Marina at Garrison Bight. These tenants’ percentage of sales over the last year between the months of June-October varies between 64%-150% when compared to their sales for the same months in 2019. Only one of these tenants is open past 10:00 p.m.; and

WHEREAS, the City, during this pandemic, has observed persons socializing at night, are often not attentive to social distancing and/or wearing face coverings as recommended by the CDC; and

WHEREAS, throughout the pandemic the City has implemented various measures to control the spread of COVID-19, including but not limited to various Emergency Directives and Emergency Ordinances requiring the wearing of face coverings; and

WHEREAS, the City has also implemented additional precautions for New Year’s Eve, including cancelling all outdoor festivities including all drops, moving people outside by opening Duval Street to pedestrians and closing Duval Street to all vehicular traffic prior to 10:00 p.m.,

installed additional signage reminding individuals to wear masks and social distance, and throughout the pandemic, the City has allowed restaurants to move tables and seating outdoors to help restaurants create more distance between tables indoors; and

WHEREAS, the City has had difficulty with enforcement of these requirements; and

WHEREAS, because the annual New Year's Eve celebrations within the City of Key West involve gatherings of tens of thousands of people on or near Duval Street and/or celebrations and gatherings of large groups of people throughout its city limits making enforcement of other COVID-19 orders more difficult, while also making the usual crowd-control more difficult than in years past; and

WHEREAS, mitigating the effects of COVID-19 and protecting the health of its citizens and visitors is a high priority of the City of Key West and minimization of social contact is necessary to avoid risk of COVID-19 infection for citizens and visitors of the City; and

WHEREAS, it is necessary and appropriate to take action to ensure that COVID-19 remains controlled, and that residents in the City of Key West remain safe and secure and that any re-opening promotes business operation and economic recovery while maintaining focus on core safety principals and slowing the spread of COVID-19, given a recent increase in positive reported cases of COVID-19 within the City of Key West; and

WHEREAS, the City of Key West finds that a curfew is necessary to safeguard life and health; and

WHEREAS, the City of Key West previously issued Emergency Directive 20-20, implementing a curfew and wishes to amend its Directive to clarify that individuals may utilize essential businesses as allowed in this directive.

NOW THEREFORE, as Mayor and City Manager of the City of Key West, we hereby order the following:

A. All individuals over the age of 65 and all individuals of any age with high-risk health conditions are strongly encouraged to limit personal interactions outside of the home and take measures to limit the risk of exposure to COVID-19.

B. All individuals should refrain from participation in social or recreational gatherings of more than 10 people.

C. Commencing on Thursday, December 31, 2020 at 10:00 p.m. and terminating on Sunday, January 3, 2021, at 6:00 a.m., a curfew is hereby imposed for the City of Key West, effective from 10:00 p.m. each night through 6:00 a.m. the next morning. All non-essential businesses shall close on or before 10:00 p.m. each night. Persons shall be in their residences or lodging establishments no later than 10:30 p.m. each night. During the period of such curfew, no person shall make use of any street or sidewalk for any purpose, except police, fire rescue, first responder, medical, health care, media, and utility repair service personnel. In addition, the curfew shall not apply to persons:

1. Working at essential establishments listed in attached Exhibit A;
2. Returning directly to their homes from work at essential establishments or going directly to work at essential establishments from their homes;
3. Making deliveries from essential establishments;
4. Individuals utilizing the services of essential establishments as delineated in attached Exhibit A;
5. Walking their dogs within 250 feet of their residences; and
6. Traveling to or from any religious service.

D. This Emergency Directive shall be enforced pursuant to Chapter 252, Florida Statutes and/or as provided for in City of Key West Emergency Ordinance 20-18.

E. This order does not affect or limit the operations of the City of Key West, Monroe County, any public utility or any State or Federal office or facility, except that such entities shall abide by the restrictions of any County, Municipal, State or Federal emergency order, as applicable. The provisions of this Directive shall serve as minimum standards in conjunction with all Emergency Directives, Emergency Ordinances, and Executive Orders previously issued and in effect and remain in force and effect unless modified or superseded. In the event of any conflict, the more restrictive measure shall control. If any provision herein, or portion thereof, is held to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this directive shall continue in full force and effect.

F. This Emergency Directive is effective upon execution.

Signed 
Teri Johnston, Mayor, City of Key West

Date: 12-28-20

Time: 3:24 Pm.

Signed 
Gregory W. Veliz, Manager, City of Key West

Date: 12-28-20

Time: 3:26 pm.

EXHIBIT A

Essential Establishments are:

- a. Healthcare providers, including, but not limited to, hospitals, doctors' and dentists' offices, urgent care centers, clinics, rehabilitation facilities, physical therapists, mental health professionals, psychiatrists, therapists, and pharmacies;
- b. Grocery stores, farmers' markets, farm and produce stands, supermarkets, food banks, convenience stores, and other establishments engaged in the retail sale of canned food, dry goods, fresh fruits and vegetables, pet supply, fresh meats, fish, and poultry, and any other household consumer products (such as cleaning and personal care products). This authorization includes stores that sell groceries and also sell other non-grocery products, and products necessary to maintaining the safety, sanitation, and essential operations of residences;
- c. Food cultivation, including farming, livestock, and fishing;
- d. Businesses that provide food, shelter, social services, and other necessities of life for economically disadvantaged or otherwise needy individuals;
- e. Newspapers, television, radio, and other media services;
- f. Gas stations; new and used automobile dealerships; and auto-supply, auto-repair, and related facilities;
- g. Banks and related financial institutions;
- h. Hardware stores;
- i. Contractors and other tradesmen, appliance repair personnel, exterminators, and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences and other structures;
- j. Businesses providing mailing and shipping services, including post office boxes;
- k. Private colleges, trade schools, and technical colleges, but only as needed to facilitate online or distance learning, and university, college, or technical college residence halls;
- l. Laundromats, dry cleaners, and laundry service providers;
- m. Restaurants, bars or food service may have employees on premises during the hours when closed under this emergency directive to engage in food preparation, food delivery, restocking supplies, cleaning the establishment, or maintaining security. This includes bars, restaurants and food service facilities located within hotels, motels, other commercial lodging establishments;
- n. Businesses that supply office products needed for people to work from home;

- o. Businesses that supply other essential businesses with the support or supplies necessary to operate, and which do not interact with the general public;
- p. Businesses that ship or deliver groceries, food, goods, or services directly to residences;
- q. Airlines, taxis, and other private transportation providers providing transportation services via automobile, truck, bus, or train;
- r. Home-based care for seniors, adults, or children;
- s. Assisted living facilities, nursing homes, and adult day care centers, and senior residential facilities;
- t. Professional services, such as legal or accounting services, when necessary to assist in compliance with legally mandated activities;
- u. Landscape and pool care businesses, including residential landscape and pool care services;
- v. Childcare facilities providing services that enable essential establishment employees to work as permitted;
- w. Businesses operating at any airport, seaport, or other government facility, including parks and government offices;
- x. Pet supply stores;
- y. Logistics providers, including warehouses, trucking, consolidators, fumigators, and handlers;
- z. Telecommunications providers, including sales of computer or telecommunications devices and the provision of home telecommunications;
- aa. Provision of propane or natural gas;
- bb. Office space and administrative support necessary to perform any of the above-listed activities;
- cc. Open construction sites, irrespective of the type of building;
- dd. Architectural, engineering, or land surveying services;
- ee. Factories, manufacturing facilities, bottling plants, or other industrial uses;
- ff. Waste management services, including collection and disposal of waste;

gg. Any business that is interacting with customers solely through electronic or telephonic means, and delivering products via mailing, shipping, or delivery services;

hh. Private and municipal Marinas and boat launches, docking, fueling, marine supply and other marina services;

ii. Hotels, motels, other commercial lodging establishments and temporary vacation rentals;

jj. Veterinarians and pet boarding facilities;

kk. Mortuaries, funeral homes, and cemeteries;

ll. Firearm and ammunition supply stores;

mm. Businesses providing services to any local, state, or Federal government, including municipalities, pursuant to a contract with such government; and

nn. Persons providing religious services, in any capacity.