

SPECIAL CITY COUNCIL AGENDA

Mayor
Ken Miyagishima

Mayor Pro-Tem
Kasandra Gandara

Councilors
Tessa Abeyta-Stuve
Gabriel Vasquez
Johana Bencomo
Gill Sorg
Yvonne Flores

Friday, March 27, 2020 at 9:30 AM



CITY HALL
P.O. BOX 20000
LAS CRUCES, NM 88004

700 N. Main St.
PHONE (575) 541-2067

The Governor of NM has issued guidelines and mandates regarding large gatherings of people. The City of Las Cruces would like to encourage safe social distancing and encourage individuals NOT to attend public meetings to the extent possible.

Individuals may view meetings live at <https://lascruces.civicweb.net/portal/>.

If you need an accommodation for a disability to enable you to fully participate in this event please contact us 72 hours before this event at [541-2115/V](tel:541-2115).

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|---|-------|
| 1. <u>CONFLICT OF INTEREST INQUIRY BY MAYOR AS REQUIRED BY LCMC SECTION 2-27 (E)(2)</u> | |
| 2. <u>RESOLUTION(S) AND/OR ORDINANCE(S) FOR DISCUSSION</u> | |
| 2.1. COUNCIL BILL NO. 20-029; ORDINANCE NO. 2921: AN EMERGENCY ORDINANCE AMENDING THE LAS CRUCES MUNICIPAL CODE 1997, CHAPTER 9, "EMERGENCY MANAGEMENT," TO INCLUDE ARTICLE III, "DECLARATION OF AN EMERGENCY; POWERS OF MAYOR DURING AN EMERGENCY," SECTIONS 9-35 THROUGH 9-41, "EMERGENCY DECLARATION ORDINANCE."
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| 3. <u>ADJOURNMENT</u> | |



**2921; Council
Bill 20-029**

Council Action and Executive Summary

Type of Action:

☐ Resolution

☒ Ordinance

☐ TIDD Resolution

District:	☒ 1 ☒ 2 ☒ 3 ☒ 4 ☒ 5 ☒ 6
1st Reading:	March 27, 2020
Drafter:	Jennifer Vega-Brown
Program:	
Adopted:	March 27, 2020
Department:	Legal
Line of Business:	

Title:	AN EMERGENCY ORDINANCE AMENDING THE LAS CRUCES MUNICIPAL CODE 1997, CHAPTER 9, "EMERGENCY MANAGEMENT," TO INCLUDE ARTICLE III, "DECLARATION OF AN EMERGENCY; POWERS OF MAYOR DURING AN EMERGENCY," SECTIONS 9-35 THROUGH 9-41, "EMERGENCY DECLARATION ORDINANCE."
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TYPE OF ACTION: ☐ Administrative ☒ Legislative ☐ Quasi-Judicial

PURPOSE(S) OF ACTION:

To approve an emergency ordinance.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

On March 11, 2020, Governor Michelle Lujan Grisham issued an Executive Order declaring a state health emergency and invoked her executive powers as authorized by the All Hazard Emergency Management Act and the Emergency Licensing Act. This action was taken in response to a declared pandemic of the COVID-19 virus. Since that time, the New Mexico Department of Health has issued at least two separate Public Health Emergency Orders in an effort to slow or halt transmission of the virus.

The actions taken by the state have been unprecedented in recent history and the health emergency caused by the pandemic may require additional quick action by state and local governments. The attached ordinance provides a mechanism for the Mayor or Mayor Pro Tem to take immediate action for the protection of life and property, and for the preservation of public peace, safety, health, welfare, and for the continuity of efficient government operations. It also allows the City Council to authorize limited action in response to an emergency situation.

The proposed ordinance allows the Mayor and City Council to exercise their emergency powers through a proclamation. The term of a proclamation under the ordinance will be for three (3) days. The Council can determine to extend the term for up to fourteen (14) days, at which time an extension or renewal would be required. Any proclamation need only be published on city media and public media.

ANNUAL BUDGET APPROVAL:

☐ Yes

☐ No

☒ N/A

Does this action amend the Capital Improvement Plan (CIP)?

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☐ Yes

☐ No

☒ N/A

OPTIONS / ALTERNATIVES:

1. Vote yes, this will approve the Emergency Declaration Ordinance and allow the Mayor and City Council to take immediate action in the event of a declared emergency.
2. Vote no, this will not approve the Emergency Declaration Ordinance, and the Mayor and City Council will not have the authority to take immediate action in the event of a declared emergency.
3. Vote to amend, this would allow the City Council to modify the ordinance.
4. Vote to table, this would postpone consideration of the ordinance and staff would require further direction from City Council.

ORDINANCE 2921; COUNCIL BILL 20-029

AN EMERGENCY ORDINANCE AMENDING THE LAS CRUCES MUNICIPAL CODE 1997, CHAPTER 9, "EMERGENCY MANAGEMENT," TO INCLUDE ARTICLE III, "DECLARATION OF AN EMERGENCY; POWERS OF MAYOR DURING AN EMERGENCY," SECTIONS 9-35 THROUGH 9-41, "EMERGENCY DECLARATION ORDINANCE."

The City Council is informed that:

WHEREAS, Governor Michelle Lujan Grisham, on March 11, 2020, issued an Executive Order declaring a state of public health emergency and invoked her executive powers as authorized by the All Hazard Emergency Management Act and the Emergency Licensing Act in response to the declared pandemic of the COVID-19 virus; and

WHEREAS, the New Mexico Department of Health has issued at least two separate Public Health Emergency Orders since March 11, 2020, to slow or halt transmission of the virus; and

WHEREAS, the actions taken by the state have been unprecedented in recent history, and the health emergency caused by the pandemic may require additional quick action by state and local governments; and

WHEREAS, the proposed ordinance provides a legal mechanism for the Mayor or Mayor Pro Tem to take immediate action for the protection of life and property, and for the preservation of public peace, safety, health, welfare, and for the continuity of efficient government operations; and

WHEREAS, the proposed ordinance also allows the City Council to authorize limited action in response to an emergency situation; and

WHEREAS, the proposed ordinance allows the Mayor and City Council to exercise their emergency powers through a proclamation; and

WHEREAS, the term of a proclamation under the ordinance will be for three (3) days, and the City Council can extend the term for up to fourteen (14) days, at which time an extension or renewal would be required; and

WHEREAS, the proposed ordinance only requires the proclamation to be published on City media and public media.

NOW, THEREFORE, Be It Ordained by the Governing Body of the City of Las Cruces:

(I)

THAT the Las Cruces Municipal Code 1997, Chapter 9, "Emergency Management" be amended as reflected below to include Article III, "Declaration of an Emergency; Powers of a Mayor During an Emergency," Section 9-35 through 9-41, "Emergency Declaration Ordinance," to read as follows:

"ARTICLE III – DECLARATION OF AN EMERGENCY; POWERS OF MAYOR DURING AN EMERGENCY

Sec. 9-35 – Short title; purpose.

A. This section may be cited as the Emergency Declaration Ordinance.

B. For the protection of life and property and for the preservation of the public peace, safety, health, welfare, and for the continuity of efficient government operations, it is necessary to codify the powers of the city and the mayor when the mayor finds that a public disorder, riot, disaster, or emergency exists in the municipality. The mayor's powers are the same as those expressly authorized in NMSA 1978, § 12-10-21, as

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amended, of the Riot Control Act for powers other than the governor to maintain the public peace, health, welfare, or safety. It is also necessary to codify the process for the city to request that the governor proclaim a state of emergency pursuant to the NMSA 1978, §§ 12-10-16 through 12-10-20 (as amended) of the Riot Control Act.

Sec. 9-36 – Proclamation of emergency; regulations.

When the mayor, or in the event of the mayor's inability to act, the mayor pro tem, determines in consultation with the emergency manager, chief of police, and/or fire chief that a civil emergency, disaster or emergency exists in the municipality, the mayor may proclaim a state of emergency in the area affected and may also request that the governor proclaim a state of emergency. During the existence of the state emergency, the mayor may, by proclamation:

- A. Prohibit any person being on the public streets, in the public parks, or at any other public place during the hours proclaimed by the mayor to be a period of curfew;
- B. Prohibit any designated number of persons from assembling or gathering on the public streets, public parks, or other open areas, either public or private, or in any public building;
- C. Prohibit the manufacture, transfer, use, possession, or transportation of any device or object designed to explode or produce uncontained combustion;
- D. Prohibit the transportation, possession or use of combustible, flammable or explosive materials in a glass or uncapped container of any kind, except in connection with the normal operation of motor vehicles, normal home use, or legitimate commercial use;
- E. Prohibit the use of certain streets or highways by the public;
- F. Control routes related to ingress and egress throughout the city based on the needs of emergency services responding to the emergency or disaster;
- G. Require evacuation of residents in the area affected by the emergency or disaster.

Sec. 9-37 – Proclamation of emergency; additional regulations; approval by governing body.

When the mayor or the mayor pro tem determine that a disaster or emergency exists, in accordance with section 9-36 of this Article, during the existence of the state of emergency, the mayor or mayor pro tem may by proclamation:

- A. Prohibit other activities the mayor reasonably believes necessary to help maintain life, property, health, welfare, safety or public peace;
 - B. Require the city manager to direct city employees, as applicable to perform emergency functions;
 - C. Require the use of available resources of the city as reasonably necessary;
 - D. Utilize the services of non-city personnel and resources necessary to adequately respond to the declared emergency;
 - E. Utilize the services of non-city personnel and resources necessary to assist in the relocation or return of non-United States citizens to their country of citizenship or assist in the relocation of those seeking asylum in the United States; and
 - F. Designate a substitute signatory for emergency obligation of funds during the pendency of the declared emergency.
- G. When the mayor exercises authority in accordance with this section 9-37, the governing body shall approve such action by resolution at their next available properly noticed meeting.

Sec. 9-38 – Term of proclamation.

A. Effective date. Any proclamation issued under this Article becomes effective immediately upon its signing by the mayor, but the mayor shall give public notice of its contents through public and private media. The restrictions may be imposed during times, upon conditions, with exceptions and in areas of the municipality designated by the proclamation of the mayor.

B. Length of emergency. Any state of emergency proclaimed under Article III, Declaration of an Emergency; Powers of Mayor During an Emergency, along with any restrictions imposed for control of that emergency, terminates automatically at noon on the third (3rd) day after it becomes effective, unless sooner terminated by proclamation of the mayor or by a majority vote of the governing body.

C. Extension of emergency. Should an emergency be proclaimed, the governing body may extend the proclamation declaring a state of emergency for up to seven (7) days, or may extend the period of time to

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run concurrently with a State of New Mexico declared state of emergency, but such time shall not exceed fourteen (14) days.

D. Termination of emergency. Any state of emergency proclaimed shall terminate at noon on the third (3rd) day after it becomes effective unless sooner terminated by proclamation of the mayor or majority vote of the governing body.

Sec. 9-39 – Meetings of governing body.

During a declared state of emergency, if it is difficult or impossible for a governing body member to attend a meeting in person, the member may participate in meetings by conference telephone or similar mode of communication, as permitted by NMSA 1978, §§ 10-15-1 et seq. (as amended). In the event an emergency prevents the governing body from having a quorum established by members participating either in person or otherwise as permitted in this Article, and after a good faith effort to make it possible for governing body members to participate in a meeting called during a declared emergency, the governing body's quorum requirements are suspended and a simple majority may be permitted.

Sec. 9-40 – Penalty.

During a state of emergency, any person who fails to comply with restrictions imposed by proclamation of the mayor under the Emergency Declaration Ordinance, Article III LCMC, is guilty of a petty misdemeanor.

Sec. 9-41 – Emergency declared definition.

For the purposes of this Article, an emergency may be defined as:

Public health emergency- an emergency need for health care, medical services, or public health, welfare, or safety initiatives to respond to a disaster, significant outbreak of an infectious disease, bioterrorist attack or other significant or catastrophic event; or

Civil emergency- conditions of unrest, including but not limited to riot, civil disturbance, unlawful assembly, hostile military or paramilitary action, war, terrorism, or sabotage. Civil emergency may include actions that evidence mass panic which causes a shortage of basic food, water, health and hygiene products, or other basic life necessities.”

Sec. 9-42 - Ordinance termination.

This ordinance will expire at the end of the current mayor's term.

(II)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this 27 day of March 2020

APPROVED

Mayor

ATTEST:

City Clerk

Moved by: Gabe Vasquez

Seconded by: Kasandra Gandara

AYES Kasandra Gandara, Gabe Vasquez, Gill Sorg, Ken Miyagishima, Yvonne Flores, Tessa Abeyta-Stuve, Johana Bencomo

NAYS