



Proclamation

OFFICE OF THE
MAYOR
CITY OF SAN LUIS

**PROCLAMATION AND CONTINUED DECLARATION OF EMERGENCY
BY
MAYOR GERARDO SANCHEZ OF THE CITY OF SAN LUIS, ARIZONA
June 17, 2020
Face Coverings in Public Spaces**

Stay Healthy, Return Stronger, Return Smarter (EO 2020-36)

WHEREAS, the City of San Luis supports Arizona Governor Douglas A. Ducey's May 12, 2020, Executive Order 2020-36 phased approach to allow businesses to remain open in a safe and healthy manner while maintaining healthcare capacity and avoiding crisis standard of care to respond to the Coronavirus Disease 2019 ("COVID-19") pandemic.

WHEREAS, for determining a safe, phased reopening approach, the Governor's Executive Order 2020-36 is guided by the Arizona Department of Health Services' (ADHS) epidemiological assessment of Arizona's specific data in alignment with the Centers for Disease Control and Prevention (CDC) guidance;

Increasing Hospital Capacity for COVID-19 Preparedness (EO 2020-16)

WHEREAS, The City of San Luis joins in the Governor's and ADHS's concern for hospital preparedness; and

WHEREAS, On May 12, 2020, Arizona Governor Douglas A. Ducey issued Executive Order 2020-36 which ordered entities such as the City of San Luis to develop policies which ensure physical distancing and provide for necessary protection equipment, the purpose of which is "*to ensure that the State of Arizona continues to mitigate the spread of COVID-19 to the greatest extent possible*" (see Paragraphs 5 and 8 of EO 2020-36); and

WHEREAS, On March 26, 2020, Arizona Governor Douglas A. Ducey issued Executive Order 2020-16, directing hospitals to increase their capacity to care for COVID-19 patients; and

WHEREAS, On June 6, 2020, ADHS Director, Dr. Christ, issued a letter to Arizona

Hospitals to fully activate their emergency plans as directed by the March 26, 2020, Executive Order 2020-16; and

WHEREAS, ADHS Director, Dr. Christ, directed the hospitals to judiciously reduce elective surgeries as part of the emergency plan, in her June 6, 2020 letter; and

COVID-19 Spreads Person to Person Even from People Who Do Not Appear Sick

WHEREAS, COVID-19 is a dangerous disease to public health because

- (1) COVID-19 spreads easily, quickly and undetected because people who have caught it are contagious but may never show symptoms, be in the early stages of the disease when they do not have symptoms, or have mild symptoms; and
- (2) COVID-19 (for a certain percentage of those infected) can lead to severe respiratory illness, permanent damage to vital organs and death.

Particularly vulnerable are those with certain underlying medical conditions of any age and the elderly; and

Without Vaccine, Without Cure, Preventing Exposure is the Only Tool to Combat COVID-19

WHEREAS, there is no vaccine, treatment or cure for COVID-19; and

WHEREAS, without vaccine, treatment or cure individuals must together prevent exposure to COVID-19;

WHEREAS, to prevent COVID-19 exposures in Arizona Courts, on May 8, 2020, Arizona Supreme Court Chief Justice Robert Brutinel issued Administrative Order No. 2020-75 titled *Authorizing Limitation of Court Operations During a Public Health Emergency and Transition to Resumption of Certain Operations*, which orders masks, face covering, or face shields for in-person contacts of any kind in all Arizona Courts.

WHEREAS, on June 12, 2020, Yuma County and every Mayor in Yuma County found that Yuma County is experiencing increased community spread and the threat of infection remains high and issued a joint proclamation urging the population to prevent exposures by adopting these habits:

1. Wash your hands often with soap and water for at least 20 seconds, or, if soap and water are not available, use a hand sanitizer that contains at least 60% alcohol,
2. Clean surfaces that you or others often touch with an EPA registered household disinfectant daily,
3. Wear a facial cover or mask whenever you go out in public, regardless of whether you are six (6) feet apart or not, and keep in mind that wearing a mask

- does not eliminate your need to keep six (6) feet apart,
4. Avoid gatherings of 10 or more people at all times,
 5. If you are sick or not feeling well, stay home and contact your medical provider as soon as possible;

and

Local Rates of COVID-19 Infection Higher than Arizona Rates

WHEREAS, Yuma County is unique to Arizona because it borders on both Mexico and California; and

WHEREAS, the populations in the region travel frequently between Arizona, California and Mexico; and

WHEREAS, Imperial County, California to the west of Yuma County is experiencing the highest rate of COVID-19 infections in California (*Gustavo Solis, Imperial County has Highest Rate of COVID-19 cases in the State*, THE SAN DIEGO UNION-TRIBUNE, June 14, 2020); and

WHEREAS, San Luis Rio Colorado, Sonora, Mexico to the South has the highest number of deaths due to COVID-19 for the State of Sonora (*Cesar Neyoy, San Luis Rio Colorado Sees steady rise in cases of COVID-19*, BAJO EL SOL, May 26, 2020); and

WHEREAS, as of June 16, 2020, there were 3,715 confirmed cases of COVID-19 in Sonora, Mexico and 244 deaths; and

WHEREAS, there are over 20,000 crossings a day with Mexico through the Ports of Entry located in the City of San Luis; and

WHEREAS, As reported in April of this year:

In the Mexican city of Sonora, near the southwest Arizona town of San Luis, COVID-19 is so rampant that an overwhelmed hospital was shut down not far from the jampacked San Luis border crossing. Mexican media reports that a nurse died at the facility, Hospital de San Luis Rio Colorado, and more than 30 doctors and nurses are sick with the virus. At least 20 doctors may also be infected. Nevertheless, the San Luis crossing remains among the busiest along the southern border, with consistently lengthy wait times.

See Mexican Hospital Overrun by COVID-19 Closes Near Busiest U.S. Crossing in Arizona, JUDICIAL WATCH, April 22, 2020; and

WHEREAS, as reported by the Yuma County Health District, on June 15, 2020, Yuma County had 125 new cases, 3,404 cumulative cases (with another 63 new cases on June 16), 100 hospitalizations, and 51 cumulative deaths (with another two (2) deaths

on June 16) from COVID-19 for a population according to the U.S. Census Bureau of 213,787;

WHEREAS, the above figures are likely an undercount because, on June 15, 2020, there had been 22,119 people in Yuma County tested, a mere 10% of the population; and

WHEREAS, on June 15, 2020, the Yuma County COVID-19 infection rate relative to number tested was a staggering 15% while Arizona has a 7% rate as reported by the ADHS on June 16, 2020; and

WHEREAS, on June 15, 2020, the Yuma County number of COVID-19 cases per 100,000 population was 1,592 nearly three times the number for the State of Arizona (as reported by the ADHS 543.8 cases per 100,000); and

WHEREAS, the number of cases in Yuma County is on an upward trajectory as reported by the Yuma County Health District; and

WHEREAS, the entire population of Yuma County depends upon one hospital; and

WHEREAS, for all the reasons recited above, the City of San Luis must do all it can to prevent further exposures that could overwhelm the local health care system including ordering all those who find themselves within the city limits of San Luis must wear a face covering in public places;

Legal Authority

WHEREAS, the City of San Luis is within its powers to take measures to protect the health, safety and welfare of and reduce the harm to the residents and visitors within its city limits from the spread of COVID-19, specifically its police powers as a political subdivision of the State of Arizona, including ARS § 9-240(B)(22) which gives the city the power to take any action and prescribe regulations, which may be necessary or expedient for the prevention or suppression of disease; and as a power reserved to the States under the Tenth Amendment to the U.S. Constitution; and

WHEREAS, the recitations made in the Declarations of Emergency issued by the City of San Luis on March 13, 2020, and March 18, 2020, recites that all levels of government are taking steps to mitigate the harms posed by COVID-19; and

WHEREAS, ARS § 26-311; San Luis City Code § 30.004 "Powers and Duties of the Mayor," San Luis City Code § 30.002 "Vice Mayor," empower the Mayor of the City of San Luis, or Vice Mayor in the Mayor's absence or disability, to declare a local emergency exists; and

WHEREAS, ARS Title 26, Chapter 2, Article 1, San Luis City Code § 30.004(A)(5) and

(B) and the October 9, 2019, San Luis Emergency Operations Plan, Basic Plan II(E), Page 6, authorize the Mayor to govern by proclamation during an emergency; and

WHEREAS, this Proclamation and Continued Declaration of Emergency does not conflict with any Executive Orders of the Governor of Arizona (see the City Attorney Opinion dated June 17, 2020); and

NOW, THEREFORE, I, Gerardo Sanchez, Mayor of the City of San Luis, Arizona, by the authority vested in me by the urgency of the circumstances and law recited above proclaim and order:

1. A public health emergency continues to exist.
2. The City of San Luis abides by all Executive Orders of the Governor of Arizona.
3. "Face Covering" as used in this proclamation means either
 - a. a face mask fabricated to cover the nose and mouth or
 - b. a cloth face covering which covers the nose and mouth and is large enough to be secured under the chin and kept on the face hands-free with either loops or rubber bands over the ears or can be tied or looped to the back of the head. Cloth face coverings should be made of a tight-weave-fabric and be folded or sewn to have more than one layer.
4. A "Face Covering" is **not** a mask or other face-covering that incorporates a one-way valve. Typically, a one-way valve is a raised plastic cylinder about the size of a quarter on the front or side of the mask designed to facilitate easy exhaling.
5. A mask or other face-covering that incorporates a one-way valve does not comply with this proclamation.
6. Face Coverings shall fit snugly but allow the wearer to breathe easily.
7. Individuals who are not required to wear a Face Covering are children and infants two (2) years old or younger and people of all ages with medical conditions which would preclude them from wearing Face Coverings.
8. All other individuals shall wear a Face Covering while in public within the city limits of the City of San Luis under these circumstances:
 - a. when in public space and in proximity to people
 - i. indoors if another person is present,
 - ii. outdoors if another person is 30 feet away (about the length of a school bus, this gives pedestrians time to put their Face Coverings on as they see the person 30 feet away),
 - b. when in the public areas of business or government building and
 - c. when waiting in line.

9. The public shall not be allowed to enter the City of San Luis Government buildings or facilities, including open space areas, without a Face Covering.

10. Face Coverings are not required:


- a. when at home,
- b. when alone in a vehicle or in the vehicle only with people you live with,
- c. when eating,
- d. when exercising outdoors alone or with people you live with,
- e. when swimming and
- f. in workspaces not open to the public. [It is recommended in nonpublic workspaces Face Coverings be worn as recommended or required by the Arizona Division of Occupational Safety and Health (ADOSH)].

11. Before any enforcement action is taken to enforce this order under ARS § 26-317 (a class 1 misdemeanor), a person shall be notified and given an opportunity to comply.

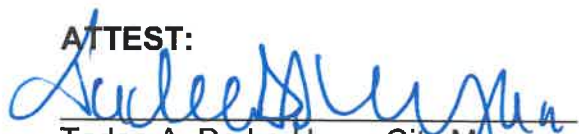
12. If any provision of this proclamation or its application to any person or circumstance is held invalid by any court of competent jurisdiction, this invalidity affects no other provision or application of this proclamation. Those provisions that remain valid shall be given effect without the invalid provision or application. To achieve this purpose, the provisions of this proclamation are declared to be severable.

13. This Proclamation (and the Declarations of Emergency and Orders the City of San Luis issued on March 13, 2020, March 18, 2020, and the Proclamations of March 20, 2020, March 30, 2020, April 30, 2020, Proclamation, June 10, 2020, City Council Order 2020-12, June 12, 2020, Joint Proclamation to the extent they do not conflict with this Proclamation or the Arizona Governor's Executive Orders) shall remain in full force and effect for the duration of the COVID-19 Public Health Emergency or until lawfully amended or terminated.

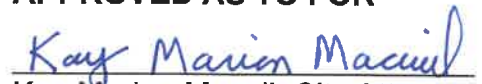
ISSUED by the Mayor of the City of San Luis, Yuma County, Arizona, this 17th day of June 2020 at 6:35 p.m.


Gerardo Sanchez, Mayor

ATTEST:


Tadeo A. De La Hoya, City Manager
Notary Public

APPROVED AS TO FOR


Kay Marion Macuil, City Attorney



City of San Luis

P.O. Box 1170 • 1090 E. Union Street • San Luis, AZ 85349-1170 • Ph (928) 341-8500

San Luis City Attorney Opinion

Re **OPINION: City Emergency Order and Governor's Executive Order: City Authority to Require Face Coverings during a Public Health Emergency**

DATE: June 17, 2020

RECEIVED

TO: Mayor Gerardo Sanchez

JUN 17 2020

COPY TO: Vice Mayor Maria Cecilia Cruz,
Council Member Matias Rosales,
Council Member Mario Buchanan, Jr.
Council Member Africa Luna-Carrasco,
Council Member Gloria Torres,
Council Member Jose Ponce and
City Manager Tadeo A. De La Hoya

Office of the City Clerk
City of San Luis, Arizona

FROM: City Attorney Kay Marion Macuil

Question Presented

This opinion addresses whether the city may issue an emergency order requiring face coverings in public during the COVID-19 pandemic crisis and whether such an order would conflict with Arizona Governor's orders.

Background

As a predicate to this discussion, On March 31, 2020, the Arizona Attorney General issued Ariz. Op. Atty. Gen. No. I20-006 (March 31, 2020). This opinion concerned the ability of local law enforcement to enforce local emergency declarations. This opinion states in part:

In response to public health concerns surrounding the COVID-19 pandemic, cities and towns in Arizona may issue (and some have already issued) emergency declarations under the authority granted to them in A.R.S. § 26-311. This statute generally allows "the mayor of an incorporated city or town or the chairman of the board of supervisors for the unincorporated portion of the county" to declare an emergency by proclamation

whenever the mayor or chairman “deem[s] that an emergency exists due to ... any [] natural or man-made calamity or disaster ... which endanger[s] life or property within the city[.]” A.R.S. § 26-311(A).

When such an emergency is declared, the mayor or chair has the “authority to impose all necessary regulations to preserve the peace and order” of the city, town, or unincorporated areas of the county, see A.R.S. § 26-311(B). But, this authority “shall not be inconsistent with orders, rules and regulations promulgated by the governor[,]” see A.R.S. § 26-307(A); see also A.R.S. § 26-303(D), (E) (establishing the governor’s power to “proclaim a state of emergency” and other powers of the governor during a state of emergency); A.R.S. § 36-787(B) (establishing governor’s authority to issue orders relating to public health during a state of emergency “in which there is an occurrence or imminent threat of an illness or health condition caused by ... an epidemic or pandemic disease”).

On May 12, 2020, the Governor issued Executive Order 2020-36 which provides that “Arizona shall institute a . . . policy that promotes physical distancing while encouraging social connectedness and allows businesses to gradually and safely open...” The order commands that any institution that serves the public in this state develop and implement policies that both ensure physical distancing and provide for necessary protective equipment. Subsection 7 of the order makes clear that no city or town may make any order, rule, or regulation that conflicts with the directives of Executive Order 2020-36 as provided by A.R.S. § 26-307.

Local Conditions

The City of San Luis, Arizona, finds itself in a unique situation. As published in the Arizona Republic on May 31, 2020:

“The outbreak at San Luis Rio Colorado is the hardest-hit area of Sonora, Arizona’s neighbor to the south. The state’s Health Ministry has reported 371 positive cases in the area □— that’s one fifth of all reported cases in Sonora □— and 48 deaths as of Friday morning.” (Rafael Carranza, *Arizona, Sonora Health Official Working Jointly to Tackle Severe Outbreaks at Yuma Border*, ARIZONA REPUBLIC, May 31, 2020)

As of June 16, 2020, there are 3,715 confirmed cases of COVID-19 in Sonora, Mexico and 244 deaths. When one additionally considers other nearby regions such as Mexicali, and Imperial County, California, and that more than 20,000 crossings a day occur at the Ports of Entry in San Luis, Arizona, the need for a localized response becomes apparent.

The Governor’s Executive Order 2020-36

The Governor has Ordered, effective as of May 16, 2020, under Executive Order 2020-36, in Section 5 of the order, that entities such as the City of San Luis shall develop policies that ensure physical distancing and provide for necessary protective equipment. Said section said such policies should be based upon guidance from the Center for Disease Control, the Department of Labor,

Occupational Safety and Health Administration, and the Arizona Department of Health Services. The specific "... intent of this Executive Order is to ensure that the State of Arizona continues to mitigate against the spread of the COVID-19 to the greatest extent possible."

Analysis

Generally, an ordinance that is more restrictive than a state statute is not in conflict with that statute. In City of Tucson v. Consumers for Retail Choice Sponsored by Wal-Mart, 197 Ariz. 600, 603, P.3d 934, 937 (Div. 2, App. 2000); the City of Tucson, a charter city, filed a declaratory judgment action to clarify the validity and constitutionality of its referendum ordinances:

But there must be an actual conflict. "Mere commonality of some aspect of subject matter is insufficient," and the ordinance and the statute must not be "capable of peaceful coexistence." City of Prescott v. Town of Chino Valley, 163 Ariz. 608, 616, 790 P.2d 263, 271 (1989), vacated in part on other grounds, 166 Ariz. 480, 803 P.2d 891 (1990); see also Jett v. City of Tucson, 180 Ariz. 115, 121–22, 882 P.2d 426, 432–33 (1994). And, although a city ordinance on a matter of local and statewide concern must not conflict with a statute, it may be more restrictive than the statute, City of Phoenix v. Breuninger, 50 Ariz. 372, 378, 72 P.2d 580, 583 (1937), " 'may parallel it, or even go beyond it.' " Randall, 67 Ariz. at 372, 196 P.2d at 479, quoting Hislop v. Rodgers, 54 Ariz. 101, 115, 92 P.2d 527, 533 (1939). See also Union Transportes de Nogales v. City of Nogales, 195 Ariz. 166, ¶ 23, 985 P.2d 1025, ¶ 23 (1999).

As further stated in Puppies 'N Love v. City of Phoenix, 116 F. Supp. 3d 971, 998–99 (D. Ariz. 2015), vacated, 283 F. Supp. 3d 815 (D. Ariz. 2017):

However, in matters of both local and statewide concern, a charter city's ordinance is invalid if it conflicts with a valid state statute. But there must be an actual conflict. Mere commonality of some aspect of subject matter is insufficient, and the ordinance and the statute must not be capable of peaceful coexistence. And, although a city ordinance on a matter of local and statewide concern must not conflict with a statute, it may be more restrictive than the statute, may parallel it, or even go beyond it.

City of Tucson v. Consumers for Retail Choice Sponsored by Wal-Mart, 197 Ariz. 600, 5 P.3d 934, 936–37 (2000) (quotation marks and citations omitted). An ordinance may also be invalid if it enters a field occupied by the state. *Id.* at 937. But "to find preemption through state occupation of the field, '[t]he existence of a preempting policy must be clear. Also, the assertedly competing provisions in question must be actually conflicting rather than capable of peaceful coexistence.'" Union Transportes de Nogales v. City of Nogales, 195 Ariz. 166, 985 P.2d 1025, 1030 (1999) (emphasis in original) (quoting Jett, 882 P.2d at 432).

Conclusion

The Governor ordered cities to develop policies that ensure physical distancing and provide for necessary protective equipment. The Governor's Order does not preclude any local order, only those that conflict with the orders of the Governor. So, does a specific local order requiring the wearing of face-coverings in public conflict? A local order that is more restrictive or one that goes beyond the Governor's Order is not one that is in automatic conflict. Only if the two orders are not 'capable of peaceful coexistence' is there a conflict.

Because of the local need for an order requiring the wearing of face coverings in public, and because such an order follows the Governor's Executive Order by

- (1) providing for the use of necessary protective equipment
- (2) following guidance from CDC and OSHA, and
- (3) mitigating against the spread of COVID-19 to the greatest extent possible,

it is the opinion of this office that such an order is not in conflict with the Governor's Executive Orders and is permitted under the authority of A.R.S. §§ 26-311 and 26-307(A).

San Luis City Attorney



Kay Marion Macuil