

ORDINANCE NO. \_\_\_\_\_

**ORDINANCE AMENDING CHAPTER 8.04 “CONTAGIOUS DISEASE” BY CREATING SECTION 8.04.021, ENTITLED “LOCAL HEALTH OFFICER ORDERS” OF THE CODE OF ORDINANCES OF THE CITY OF EAU CLAIRE**

**THE CITY COUNCIL OF THE CITY OF EAU CLAIRE DO ORDAIN AS FOLLOWS:**

***SECTION 1.** That Chapter 8.04, entitled “Contagious Disease” is hereby amended by creating Section 8.04.021, entitled “Local Health Officer Orders” to read as follows:*

**8.04.021 Local Health Officer Orders**

A. Purpose. The city council finds it necessary, in order to protect the public health, safety, and welfare, to empower the local health officer with certain authority, in limited circumstances with adequate procedural and substantive safeguards to ensure public oversight and preserve personal liberties while allowing necessary and prompt response in times of public health emergency, to issue general orders of general application. Any such orders shall be grounded in and supported by the best available scientific understanding as informed by the local conditions in the city of Eau Claire. The need and utilization of general orders is intended to remain exceptional and infrequent, utilized only in times of pandemic or other actual or imminent threat to the community from a highly infectious, novel or otherwise unusually difficult to treat communicable disease, illness, or comparable community wide public health threat that without prompt action significantly threatens the health and imperils the lives of residents. Even in such times, the responsibility of a local health officer to act as is reasonable and necessary cannot encompass anything and everything, but shall be focused. This section neither restricts the local health officer’s statutorily granted authority to issue orders to specific individuals or entities related to communicable disease, nor the local health officer’s ability to issue advisory directives, rather it delegates limited legislative authority compatible with our constitutional structure to promptly issue enforceable orders of general application consistent with chapter 252, Wis. Stats. and this code section, with retained legislative review as provided herein.

B. Order authorized during emergency declaration. In the event an emergency has been declared in the city utilizing the statutory authority provided in chapter 323, Wis. Stats., and such emergency requires an enforceable general local public health order of general application be issued, the local health officer may issue such an order consistent with the requirements of s. 252.03, Wis. Stats., and as supported by the best available scientific understanding, following review and written consent by the city manager, acting in an emergency legislative capacity.

C. Order authorized by city council. In the absence of an emergency declaration, when an enforceable general local public health order of general application is found to be necessary by the local health officer based on the local conditions, the local health officer may issue such an order consistent with the requirements of s. 252.03, Wis. Stats., and as supported by the best available scientific understanding, for a duration recommended to be no longer than 14 days, but in any event shall not be longer than 30 days.

1. Within the duration of any order issued in accordance with this paragraph, the city council may consider on its agenda a resolution to support and uphold such order. If the resolution fails, the order shall become advisory and shall no longer be enforceable within the

city. If the order is not considered by the city council within the duration of the order, the order shall be deemed approved.

2. Orders issued in accordance with this paragraph C. may be issued in no more than 30-day increments up to a maximum of 180 days from the first local public health order issued related to the same incident or local health condition.

a. Upon request of the local health officer, based on local conditions, the city council may consider resolutions to extend the enforceability of a local health officer order for an additional 90 days each to a total maximum of one year.

D. Order authorization by direct legislation. 1. As an alternate means of protecting the public health, safety, and welfare and through additional retained legislative authority, the city council may consider adoption by ordinance of a local health officer order or advisory, in whole or in part, at any time.

2. Ordinance adoption following a properly noticed meeting and public discussion shall be necessary in order to continue enforceability of any local health officer order, in whole or in part, after the time period of one year related to the same incident or local health condition.

E. Procedural Safeguards. Any order issued pursuant to paragraphs B. or C. above shall satisfy all of the following or failing to do so shall be only advisory in nature.

1. As soon as practicable upon issuance of an order and regularly thereafter, the local health officer shall undertake an investigation of all relevant local medical and public health conditions and report the same to the board of health for review and recommendation

2. Such orders shall be no longer than 30 days in effect, but may be renewed for succeeding 30 day or shorter periods as may be required by local conditions.

3. The city manager or local health officer shall make a report to the city council regarding the local conditions and the necessity of any requirements in the local health order at every held, regularly scheduled city council meeting during the order, which shall be at least every 30 days.

4. Publication as a class 1 notice under ch. 985, Wis. Stats. for public notice and awareness of standards of conduct they must follow or be subject to enforcement. Such orders shall have the full force and effect of law immediately upon publication of the order as a class 1 notice under ch. 985, Wis. Stats., and, unless otherwise specifically provided, shall take effect immediately following publication. Publication shall be required upon the initial issuance of an order or upon the renewal of an order in which the substantive requirements for an individual of entity's actions have changed. Orders issued pursuant to paragraph B. above shall be effective immediately and shall be published according to this subsection as soon as practicable.

5. Statements as to the purpose, local conditions, current scientific understanding, and other data and findings required in subparagraphs F.2. through 6. below and all orders, shall be made available to the public through such efforts as posting on a city website and at such other locations as deemed effective by the city to enhance public information. Orders without substantive changes shall also be distributed in such manner.

F. Substantive Safeguards. Any order issued pursuant to paragraphs B. or C. above shall, in addition to requirements in paragraph E. above, also satisfy all of the following or failing to do so shall be only advisory in nature.

1. Only impose such restrictions and requirements as are necessary based on a factual inquiry into local circumstances to prevent, suppress and control direct human health risks proximately related to a highly infectious, novel, or otherwise unusually difficult to treat

communicable disease, illness, or comparable community wide public health threat that without prompt action significantly threatens the health and imperils the lives of residents, as determined in the professional judgment of the local health officer.

2. To the extent feasible, orders shall be content neutral, non-discriminatory, avoid classifications, and reasonable and necessary in scope and duration. Classification shall only be used when necessary, and if necessary, then only when such classification substantially relates to the mitigation of a threat to public health based on local conditions and as supported by best available scientific understanding.

3. State the strategic purpose of the order.

4. State the local health officer's finding that voluntary targeted disease control strategies are inadequate to achieve the order's purpose and that compulsory measures are reasonable and necessary to disrupt disease transmission.

5. State the current scientific understanding on which the order and the findings on which it relies are based, including any available evidence and the reasoning behind any assumptions the public health authority has made regarding the transmissibility and virulence of the infectious agent or toxin, the routes by which the infectious agent or toxin is transmitted, and the factors that determine the risk of transmission as they relate to the content of the order, including the local health officer's finding that a communicable disease as described in subparagraph 1. above is affecting or is likely in the near future to affect the geographic area to which the order is applied and that voluntary measures or targeted disease control measures are unlikely to be adequate to achieve the strategic purpose of the order.

6. Include any limitations, exceptions, or accommodations reasonably necessary to ensure conformance with the requirements of federal, state, and local disability laws, federal and state constitutions.

G. Advisory Directives. The local health officer shall consider the issuance of an advisory directive prior to utilization of paragraph B. or C. above. Mandatory enforceable general orders of general application shall only be utilized when deemed necessary to ensure the public health safety and welfare of the city and as otherwise provided in this section. Local health officer orders issued beyond one year that have not been previously adopted by ordinance prior to that date shall not be enforceable and shall be thereafter solely advisory in nature.

H. Exclusive application. Only those orders issued pursuant to and in compliance with this section shall be applicable within the city of Eau Claire.

I. Definitions. Those definitions contained in Section 2.52.010 are incorporated into this section as if stated fully herein.

J. Penalty. 1. Any person or entity in violation of an order issued pursuant to this section shall be assessed a forfeiture of not less than sixty dollars, in addition to the costs of prosecution. Each action in violation of this section shall constitute a separate violation.

2. Violations of an order issued pursuant to this section may result in the non-issuance or non-renewal of a city-issued license.

3. Violations of an order issued pursuant to this section shall constitute a public nuisance under chapter 9.36 of this code or under chapter 823, Wis. Stats.

***SECTION 2. That Section 1.24.030, entitled Deposit schedule and specifically paragraph C. 5 is hereby added to read as follows:***

C. The following violations of the code of ordinances shall be Class 3 violations and shall require a cash deposit consisting of a forfeiture of \$200.00 plus applicable costs, penalties, and assessments as prescribed by Wisconsin Statutes:

5. Section 8.04.021 Local Health Officer Orders

(SEAL) \_\_\_\_\_  
President Terry L. Weld

(SEAL) \_\_\_\_\_  
City Manager Dale Peters

(ATTESTED) \_\_\_\_\_  
City Clerk Carrie L. Riepl

First Reading

Final Reading

Adopted

Published