

ORDINANCE NO. 08-2020

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COVINGTON, WASHINGTON, AMENDING CHAPTER 2.50 CMC TO CLARIFY THE CITY MANAGER'S AUTHORITY TO PROCLAIM AND DECLARE EMERGENCIES AND SET CRIMINAL PENALTIES FOR VIOLATIONS OF EMERGENCY PROCLAMATIONS, DECLARATIONS, AND ORDERS; ADOPTING FINDINGS OF FACT; DECLARING A PUBLIC EMERGENCY; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the killing of George Floyd in Minneapolis on May 25, 2020, has generated anger and outrage across the United States, resulting in mass demonstrations; and

WHEREAS, the City of Covington ("City") supports the peoples' right to lawful assembly guaranteed by the Constitution of the United States of America and the Constitution of the State of Washington; and

WHEREAS, the cities of Seattle, Bellevue, Auburn, Tukwila, Renton, and Puyallup have all had peaceful protests that have been infiltrated by individuals that have caused violence, vandalism and theft; and

WHEREAS, in cities around the country and King County, demonstrations have turned violent and led to property destruction, looting, injuries, and the mobilization of the national guard; and

WHEREAS, the protection of the lives, public peace, health, property, safety, and welfare of the residents of Covington during this emergency is of utmost importance; and

WHEREAS, immediate and extraordinary measures must be taken to protect the property, safety, and welfare of city residents, businesses, and government personnel; and

WHEREAS, the events are rapidly evolving regionally and locally, and police responses are escalating; and

WHEREAS, the Governor of the State of Washington has mobilized the Washington National Guard in King County; and multiple King County cities have implemented curfews in an effort to allow peaceful protest and curtail criminal behavior; and

WHEREAS, the City supports and often facilitates demonstrations and events carried out under first amendment rights and works to ensure public safety while preserving the right to free speech and assembly; and

WHEREAS, as the City and other cities have experienced, these events evolve rapidly and require immediate law enforcement escalation and crowd size can quickly put our law enforcement officers at risk; and

WHEREAS, the presence of large numbers in a limited space, combined with the clear, present, and escalating threat of violence, presents an unacceptably high risk of serious injury to innocent people including lawful protestors and police, as well as significant property damage; and

WHEREAS, the Covington City Manager issued a City of Covington Proclamation of Emergency and Order on June 1, 2020 declaring an emergency and setting a curfew beginning at 10:00 p.m. on June 1, 2020 and extending to June 2, 2020 at 5:00 a.m.; and

WHEREAS, the City Manager's authority to issue such an emergency proclamation and curfew order already existed under Chapter 2.50 CMC; and

WHEREAS, the City Council of the City of Covington desires to clarify the emergency powers of the city manager to ensure that the public health, safety, and welfare are protected during emergencies; and

WHEREAS, this meeting is being held as an emergency meeting pursuant to RCW 42.30.070; and

WHEREAS, RCW 35A.13.190 permits an ordinance to become effective immediately but requires that it must be passed by a majority plus one of the whole membership of Council to have such an effect; and

WHEREAS, the adoption of this ordinance promotes the public good and is necessary for the protection of public health, property, safety, welfare, and the public peace; and

WHEREAS, a public emergency exists requiring that this ordinance take effect immediately upon adoption; and

WHEREAS, the City Council finds and declares that a public emergency exists due to the potentially violent demonstrations experienced in Covington and by other cities, making this ordinance necessary for the immediate protection of the public health, public safety, public property, and public peace;

NOW, THEREFORE, The City Council of the City of Covington, Washington, do ordain as follows:

Section 1. Findings of Fact. The recitals set forth above are hereby adopted as the City Council's findings of fact.

Section 2. Chapter 2.50 CMC is hereby amended to read as set forth in the attached Exhibit A.

Section 3. Severability. If any section, paragraph, sentence, clause, or phrase of this ordinance, or its application to any person or situation, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or preemption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or situation. The City Council of the City of Covington hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clauses, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional.

Section 4. Corrections. Upon the approval of the City Attorney, the City Clerk and the codifiers of this ordinance are authorized to make any necessary corrections to this ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers, and any reference thereto.

Section 5. Ratification. Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and affirmed.

Section 6. Declaration of Public Emergency. For the reasons set forth above and in the City of Covington Proclamation of Emergency and Order, dated June 1, 2020, the City of Covington City Council finds and declares that a public emergency exists due to the potentially violent demonstrations experienced in Covington and by other cities, making this ordinance necessary for the immediate protection of the public health, public safety, public property, and public peace pursuant to RCW 35A.13.190.

Section 7. Effective Date. This ordinance, as a public emergency ordinance necessary for the protection of the public health, public safety, public property, and public peace, and having received at least a majority plus one of the whole membership of the Covington City Council, shall take effect and be in full force immediately upon its adoption. A summary of this ordinance may be published in lieu of publishing the ordinance in its entirety.

Passed by the City Council of the City of Covington this 2nd day of June, 2020.

Signed in authentication of its passage this 2nd day of June, 2020.

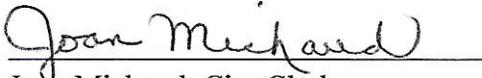
[Signature Page Follows]

/s/ Jeff Wagner, as authorized by email on June 2, 2020
Jeff Wagner, Mayor

EFFECTIVE: 06/02/2020

PUBLISHED: 06/05/2020

AUTHENTICATED:


Joan Michaud, City Clerk

APPROVED AS TO FORM:

/s/ Mark Orthmann, as authorized by email on June 2, 2020
Mark Orthmann, City Attorney

EXHIBIT A

Chapter 2.50

EMERGENCY MANAGEMENT – PROCLAMATIONS OF CIVIL EMERGENCIES

Sections:

- 2.50.010 Established.**
- 2.50.020 Definitions.**
- 2.50.030 Director – Appointment – Responsibility.**
- 2.50.040 Functions.**
- 2.50.050 Powers.**
- 2.50.060 Purchases and expenditures.**
- 2.50.070 Search and rescue operations.**
- 2.50.080 *Repealed.***
- 2.50.090 Proclamation of civil emergency – Emergency defined.**
- 2.50.100 Actions that may be taken.**
- 2.50.110 Civil rights protected.**
- 2.50.120 Delivery to news media.**
- 2.50.130 Violation – Penalty.**

2.50.010 Established.

Pursuant to Chapter 38.52 RCW, there is hereby created in the City the department of emergency management for the purpose of performing local emergency management functions.

2.50.020 Definitions.

When used in this chapter, the following words have the following meanings. Words used in the plural shall include the singular, and words used in the singular shall include the plural. Words used in the masculine gender shall include the feminine.

- (1) “City” means the City of Covington, King County, Washington.
- (2) “Director” means the director of the City’s department of emergency management.
- (3) “Emergency management” means the preparation for and the carrying out of all emergency functions, other than functions for which the military forces are primarily responsible, to mitigate, prepare for,

respond to, and recover from emergencies and disasters, and to aid victims suffering from injury or damage, resulting from disasters caused by all hazards, whether natural, technological, or human caused, and to provide support for search and rescue operations for persons and property in distress. "Emergency management" does not mean preparation for emergency evacuation or relocation of residents in anticipation of nuclear attack.

(4) "Emergency" or "civil emergency" or "disaster" means an event or set of circumstances which demands immediate action to preserve public health, protect life, protect public property, or to provide relief to any stricken community overtaken by such occurrences, which include, but are not limited to, a riot, unlawful assembly, insurrection, enemy attack, sabotage, or other hostile action; a natural or human caused disaster, including fire, flood, storm, explosion, earthquake, volcanic disturbance, public health emergency, pandemic, or other natural cause

(5) "Search and rescue" means the acts of searching for, rescuing, or recovering by means of ground, marine, or air activity any person who becomes lost, injured, or is killed while outdoors or as a result of a natural, technological, or human caused disaster, including instances involving searches for downed aircraft when ground personnel are used.

2.50.030 Director – Appointment – Responsibility.

(1) The director of the department of emergency management shall be appointed by and directly responsible to the City manager and shall serve until removed by the City manager.

(2) The director shall have direct responsibility for the organization, administration, and operation of the department of emergency management, subject to the direction and control of the City manager.

(3) In the event of the director's absence, resignation, death or inability to serve, the City manager shall appoint another person to serve as director.

(4) The director shall prepare and maintain a local emergency management plan and program in accordance with the State of Washington comprehensive emergency management plan and program. Before the local plan shall become effective, it shall be approved by the City Council and certified for consistency with the State plan by the State Adjutant General as directed in RCW 38.52.070(1).

2.50.040 Functions.

It shall be the duty of the department of emergency management to perform all local emergency management functions, within the City and outside the territorial limits of the City as may be required by Chapter 38.52 RCW.

2.50.050 Powers.

The department of emergency management, the director and the City manager shall have all powers granted under Chapter 38.52 RCW, as now or hereafter amended and as may otherwise be provided by law. The City manager shall have those further powers identified elsewhere in this chapter

2.50.060 Purchases and expenditures.

The City Council shall have the power to make appropriations in the manner provided by law for making appropriations for the ordinary expenses of the City for the payment of the department of emergency management's expenses.

2.50.070 Search and rescue operations.

The police chief shall be responsible for local search and rescue activities. Operation of search and rescue operations shall be in accordance with State and local operations plans adopted by the City Council. The director shall notify the State military department of all search and rescue missions. The police chief may restrict access to a specific search and rescue area to personnel authorized by him. Access shall be so restricted only for the period of time necessary to accomplish the search and rescue mission.

2.50.080 Regional disaster plan adopted.

Repealed by Ord. 01-15.

2.50.090 Proclamation of civil emergency – Emergency defined.

When a civil emergency, or the imminent threat thereof, occurs in the city and results in or threatens to result in the death or injury of persons, or the destruction of or damage to property to such extent as to require, in the judgment of the City manager, extraordinary measures to protect the public peace, safety and welfare, the City manager shall forthwith proclaim in writing the existence of a civil emergency. In the absence of the City manager, such a civil emergency may be declared by his or her designee.

2.50.100 Actions that may be taken.

Upon the proclamation of a civil emergency as set forth in CMC 2.50.090 and/or Chapter 38.52 RCW, and during the existence of such emergency, the City manager may make and proclaim any or all of the following orders:

A. An order imposing a general curfew applicable to the City as a whole, or to such geographical area or areas of the City and during such hours as the City manager deems necessary, and from time to time to modify the hours such curfew will be in effect and the area or areas to which it will apply;

B. An order requiring any or all business establishments to close and remain closed until further order;

C. An order closing to the public any or all public places, including streets, alleys, public ways, schools, parks, beaches, amusements areas, and public buildings; or

D. Such other orders as are imminently necessary for the protection of life, public health, safety, property, and/or welfare.

Provided, however, that any such orders shall, be presented to the City Council for ratification and confirmation, modification, or rejection at the City Council's next regularly scheduled meeting at the latest. If the City Council modifies or rejects the order, said modification or rejection shall be prospective only, and shall not affect any actions taken prior to the modification or rejection of the order.

2.50.110 Civil rights protected.

An order pursuant to CMC 2.50.100 shall contain the following:

A. A statement of the facts upon which the order is based; and

B. A statement that the City manager believes it is in the best interest of public safety, health, welfare, rescue and recovery efforts, and/or the protection of property that the exercise of certain rights be temporarily limited; and

2.50.120 Delivery to news media.

The City manager shall cause any proclamation issued by him or her pursuant to the authority of this chapter to be delivered to all news media within the City and shall utilize such other available means, including public address systems, as shall be necessary, in his or her judgment, to give notice of such proclamations to the public.

2.50.130 Violation – Penalty.

It is unlawful for anyone to fail or refuse to obey any such order proclaimed by the City manager. Any person found to have knowingly failed or refused to obey any such order proclaimed by the City manager is guilty of a misdemeanor punishable by imprisonment in jail for a maximum term of not more than 90 days, or by a fine in an amount of not more than \$1,000, or by both such imprisonment and fine.