



**ORDINANCE 2020-APR-002**

**AN ORDINANCE ESTABLISHING A BAN ON THE SALE OF CERTAIN ALCOHOL PRODUCTS TO AID IN STOPPING THE COMMUNITY SPREAD OF THE COVID-19 VIRUS; AND, URGING ALL CITIZENS TO CHOOSE TO SELF-CURFEW DURING CERTAIN HOURS FOR THE PERIOD OF THE DECLARED EMERGENCY**

**WHEREAS**, the Governor of the State of New Mexico issued Executive Order 2020-004 declaring a State of Health Emergency pursuant to All Hazard Emergency Act, NMSA 1978 § 12-10-1 *et.seq.*, and the Public Health Emergency Response Act, NMSA 1978 § 12-10A-1 *et.seq.*, due to the rapid spread of the COVID-19 virus; and

**WHEREAS**, the New Mexico Health Secretary issued a Public Health Order on March 23, 2020 pursuant to her authority under the Public Health Act, NMSA 1978 §24-1-1 *et.seq.*, the Public Health Emergency Response Act, NMSA 1978 § 12-10A-1 *et.seq.*, and the Department of Health Act, NMSA 1978 §9-7-1 *et.seq.*, that orders the suspension of in-person operations of all business not identified as “essential business” by the Order. The Order defined essential business in a manner that required the closure of retailers holding “dispenser licenses” for the sale of alcohol unless the business generates the majority of its revenue from the sale of food items, pet food and supplies for the maintenance of animals, and other household consumer products; and

**WHEREAS**, Health Secretary issued additional restrictions in the Public Health Order issued on April 6, 2020 that orders retail businesses deemed essential that are allowed to remain open limit the number customers in the retail space to 20% or less of the normal occupancy load and that customers that are waiting outside of the retail space maintain a distance of at least six feet from each other; and

**WHEREAS**, the Health Secretary’s April 6, 2020 Public Health Order provides that it does not “restrain or preempt local authorities from enacting more stringent restrictions than those required by the Order,” and

**WHEREAS**, all counties in New Mexico have the authority to adopt ordinances that are not inconsistent with the laws of New Mexico that provide for the safety and preserve the health of the county and its inhabitants pursuant to NMSA 1978 §4-37-1, and

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**WHEREAS;** McKinley County has a significant population of homeless individuals that purchase alcoholic beverages at convenience stores, and then consume and share the alcoholic beverages with other similarly situated individuals in groups that typically do not maintain adequate social distancing and otherwise engage in behaviors that significantly increase the risk of spreading the COVID-19 virus; and,

**WHEREAS,** THIS ORDINANCE (2020-APR-002) is promulgated as an EMERGENCY ORDINANCE limiting the sale of certain alcoholic beverages; and requesting all citizens to choose to self-curfew all to slow and stop the spread of the COVID-19 virus; and, to aid in implementing the Orders Issued by the Governor of New Mexico and the Secretary of the New Mexico Department Health (DOH) pursuant to those powers granted them under the Public Health Emergency Response Act, and the All Hazards Emergency Management Act; and,

**WHEREAS,** The Board of County Commissioners has the authority to adopt ordinances as established in State Law – N.M.S.A. §4-37-7. Typically, a proposed ordinance must be published in a newspaper for two weeks before it can be considered. However, N.M.S.A. §4-37-7(C) abrogates that requirement when there is an "emergency declared by the board of county commissioners to be an immediate danger to the public health, safety and welfare of the county." The Board of County Commissioners did, by Resolution No. MAR-20-029 make a “Declaration of a Health Emergency” regarding COVID-19. **(Attached Hereto for reference).**

**NOW THEREFORE, BE IT ORDAINED** by the Board of County Commissioners of McKinley County that:

**SECTION 1: TITLE:**

This Ordinance shall be known as the “COVID-19 EMERGENCY ALCOHOL SALES RESTRICTIONS ORDINANCE.”

**SECTION 2: DEFINITIONS:**

- A. “Convenience store” means a business that sells products such as food, beverages, tobacco products, medicines, dry goods, lottery tickets, and other consumer items directly to consumers and that has a retail space of less than four thousand (4000) square feet.
- B. “Employed by” includes persons volunteering their services that do not receive a salary or other type of remuneration.
- C. “Essential business” means any business or non-profit falling within any one of the categories of “essential business” listed in the most current New Mexico Health Department Public Health Order.
- D. “Person” means natural persons as well as business entities such as partnerships, limited liability companies, and corporations.
- E. “Retail space” means the area of an “essential business” that sells products or services directly to consumers or end users that customers are commonly allowed to enter.

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### SECTION 3: SELF-CURFEW:

A. The Board of County Commissioners strongly encourages that until the Governor revokes the Declaration of a Health Emergency contained in Executive Order 2020-004, all citizens to choose to self-curfew beginning at 8:00 pm each evening and continuing until 5:00 am the following morning

SECTION 4: CLOSURE OF BUSINESSES: This Ordinance continues and continues all business closures as set forth in the Governors issued Executive Order 2020-004 declaring a State of Health Emergency pursuant to All Hazard Emergency Act, NMSA 1978 § 12-10-1 et.seq., and the Public Health Emergency Response Act, NMSA 1978 § 12-10A-1 et.seq., due to the rapid spread of the COVID-19 virus.

### SECTION 5: ALCOHOL SALES RESTRICTIONS

- A.** Any business that holds a dispensers license pursuant to the New Mexico Liquor Control Act may not sell, serve, or otherwise transfer beer, wine, or any other alcoholic beverage as those terms are defined by the New Mexico Liquor Control Act, NMSA 1978 §60-3A-3, at any time on any day of the week until such time that the Governor revokes the Declaration of a Health Emergency contained in Executive Order 2020-004, unless such business derives more than fifty percent (50%) of its gross revenue from the sale of food, non-alcoholic beverages, water, dry goods, and other consumable household products.
- B.** Any business that holds a dispensers license pursuant to the New Mexico Liquor Control Act that is not prohibited from selling alcohol (i.e. Convenience stores and grocery stores, etc.) that hold a dispensers license pursuant to the New Mexico Liquor Control Act may not sell, serve, or otherwise transfer beer, wine, or any other alcoholic beverage as those terms are defined by the New Mexico Liquor Control Act, NMSA 1978 §60-3A-3, that contain fifteen percent (15%) or greater alcohol content at any time on any day of the week until such time that the Governor revokes the Declaration of a Health Emergency contained in Executive Order 2020-004 unless revoked sooner by the McKinley County Board of County Commissioners.
- C.** Any business that holds a dispensers license pursuant to the New Mexico Liquor Control Act that is not prohibited from selling alcohol (i.e. Convenience stores and grocery stores, etc.) that hold a dispensers license pursuant to the New Mexico Liquor Control Act as those terms are defined by the New Mexico Liquor Control Act, NMSA 1978 §60-3A-3, shall not sell more than one bottle of wine; or one 12 pack of beer (with less than fifteen percent (15%) alcohol content) per customer at any time on any day of the week until such time that the Governor revokes the Declaration of a Health Emergency contained in Executive Order 2020-004 unless revoked sooner by the McKinley County Board of County Commissioners.

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## SECTION 6: PENALTIES AND ENFORCEMENT

- A. **PENALTY:** It is a misdemeanor for any person to violate any section of this ordinance and any person found guilty of violating any section of this ordinance shall be punished by a fine of not less than one hundred dollars (\$100) nor more three hundred dollars (\$300). Each day that a violation continues shall constitute a separate and distinct offense.
- B. **ENFORCEMENT:** The provisions of the ordinance shall be enforced by the issuance of a citation by any law enforcement officer employed by McKinley County. No person shall be arrested for violation of any section of this ordinance.
- An enforcement officer shall not initiate contact with any person or place any person in investigative detention for violation of Section 5 of this ordinance unless the officer has reasonable cause to believe that the person has violated a violation of another section of this ordinance or a violation of the laws of the New Mexico. Upon a first violation of Section 5 of the Ordinance, the enforcement officer shall issue a warning notice using the uniform traffic citation. No person shall be issued a citation for violation of Section 5 of this Ordinance unless the person shall first have been issued a warning notice.
- D. The prosecution of any citations for a violation under this ordinance will be in the Magistrate Court for McKinley County; unless the Board of County Commissioners creates an office to hear and give due process on such citations

## SECTION 7: SEVERABILITY

If any section, sentence, clause or phrase of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance

## SECTION 8: EFFECTIVE DATE AND DURATION:

- A. The Board of County Commissioners finds that there is an urgent public need for this measure to become effective as soon as possible and therefore declares this Ordinance to be an emergency measure. This ordinance shall become effective upon recordation with the County Clerk. N.M.S.A. §4-37-9(C) provides that "when a board of county commissioners declares that it is necessary for the public peace, health and safety that an ordinance take effect immediately after passage
- B. This Ordinance shall remain effective until the Governor revokes the Declaration of a Health Emergency contained in Executive Order 2020 unless revoked sooner by the McKinley County Board of County Commissioners.

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PASSED, ADOPTED, and APPROVED, this the 13<sup>th</sup> day of April 2020 in open meeting consistent with the directives of the Attorney General of the State of New Mexico to local governments for the conducting of meetings during this crisis.

**McKINLEY COUNTY BOARD OF COMMISSIONERS**



Billy Moore  
Billy Moore, Chairman

Bill Lee  
Bill Lee, Commissioner

Tommy Nelson  
Tommy Nelson, Commissioner

ATTEST:

Harriett K. Becenti  
Harriett K. Becenti, County Clerk



*Handwritten initials*