

SALT LAKE CITY DECLARATION OF LOCAL EMERGENCY AND EXERCISE OF
EMERGENCY POWERS
No. B of 2021

LEGAL FRAMEWORK

Under Utah Code 53-2a-208(1), Mayor Erin Mendenhall, as the chief executive of Salt Lake City Corporation, may declare by proclamation a state of emergency if she finds that (a) a disaster has occurred or the occurrence or threat of a disaster is imminent in an area of the municipality; and (b) the municipality requires additional assistance to supplement the response and recovery efforts of the municipality.

A disaster is defined as “an event that causes, or threatens to cause loss of life, human suffering, public or private property damage, or economic or social disruption resulting from attack, internal disturbance, natural phenomena, or technological hazard; and requires resources that are beyond the scope of local agencies in routine responses to emergencies and accidents and may be of a magnitude or involve unusual circumstances that require response by government, not-for-profit or private entities.” Utah Code 53-2a-102(5). “Natural phenomena” includes any epidemic. Utah Code 53-2a-102(14).

Under Utah Code 53-2a-208(2) the declaration of a local emergency (a) constitutes the official recognition that a disaster situation exists within the affected municipality; (b) provides a legal basis for requesting and obtaining mutual aid or disaster assistance from other political subdivisions or from the state or federal government; (c) activates the response and recovery aspects of any and all applicable local disaster emergency plans; and (d) authorizes the furnishing of aid and assistance in relation to the proclamation.

The emergency proclamation declaring a local emergency must include (a) the nature of the local emergency; (b) the area or areas that are affected or threatened; and (c) the conditions that caused the emergency. Utah Code 53-2a-208(3).

A local emergency remains in effect for thirty days unless extended or terminated by the municipal legislative body or terminated by joint resolution of the Utah Legislature. Utah Code 53-2a-208(6).

If a local emergency is terminated, a new state of emergency in response to the same disaster may be declared if the Mayor finds that exigent circumstances exist for a second declaration of local emergency. Utah Code 53-2a-208(7).

“Exigent circumstances” means a significant change in circumstances following the expiration of a state of emergency declared in accordance with this chapter that (a) substantially increases the threat to public safety or health relative to the circumstances in existence when the state of emergency expired; (b) poses an imminent threat to public safety or health; and (c) was not known or foreseen and could not have been known or foreseen at the time the state of emergency expired. Utah Code 53-2a-203(3).

After a Mayor declares a local emergency, the Mayor may exercise emergency authority, including, but not limited to, (a) utilizing all available resources of the political subdivision as reasonably necessary to manage the local emergency and (b) employing measures and giving direction to local officers and agencies which are reasonable and necessary for the purpose of securing compliance with the provisions of the Disaster Response and Recovery Act, and with orders, rules and regulations made under the act. Utah Code 53-2a-205.

After an order is issued by the Mayor pursuant to her emergency authority, the order “shall have the full force and effect of law during the state of emergency” and the order must be filed with the office of the clerk of the municipality and delivered to Salt Lake County. Utah Code 53-2a-209.

FACTS

On March 11, 2020, Mayor Erin Mendenhall declared a local emergency due to the global outbreak of COVID-19. Over the next year, Mayor Mendenhall exercised her emergency authority related to COVID-19 and issued public health and safety emergency orders that had the force of law. This included City-wide mask orders issued on April 7 and April 8, 2021.

Under HB294, the Pandemic Emergency Powers Amendments, which was passed into law on March 24, 2021, the Utah Legislature established three thresholds for COVID-19, which, if met, would terminate any local emergency in effect related to COVID-19.

The thresholds were: (1) the state’s 14-day case rate is less than 191 per 100,000 people; (2) the statewide seven-day average COVID-19 ICU utilization is less than 15%; and (3) the Department of Health provides notice that 1,633,000 prime doses of a COVID-19 vaccine have been allocated to the state.

On May 4, 2021, the Utah Department of Health notified the Utah Legislature that all three thresholds had been met, and the Mayor’s March 11, 2020 declaration of local emergency related to COVID-19 automatically terminated, along with all related emergency orders, including the City-wide mask order.

On July 1, 2021, the provisions of HB294 were repealed, including the requirements for thresholds and the automatic termination of local emergencies related to COVID-19.

In July and August 2021, the Delta variant of COVID-19 began rapidly spreading through the nation and the State of Utah. The Delta variant is more highly contagious than the previous variant of COVID-19. The Delta variant is now the dominant strain of COVID-19 in the United States and Utah. There is also growing evidence that the Delta variant is more likely to lead to hospitalization and death. In addition, vaccinated individuals can still transmit the Delta variant, despite the vaccines’ efficacy in preventing infections, hospitalizations, and death.

On July 27, 2021, the Centers for Disease Control (“CDC”) issued updated guidance on the highly contagious nature of the Delta variant and recommended that fully vaccinated people wear a mask in public indoor settings in areas of substantial or high transmission. The CDC also

recommended universal indoor masking for all teachers, staff, students, and visitors to schools regardless of vaccination status.

Beginning in early August, 2021, Salt Lake City exceeded two of the three thresholds set forth in the now-repealed HB294, with an average of more than 191 per 100,000 cases of COVID-19 reported on a daily basis, and with COVID-19 ICU utilization above 15%.

The CDC currently identifies Salt Lake County, Utah as having a “high” level of community of transmission. Local health officials have identified that Salt Lake City, Salt Lake County, and the State of Utah are all seeing a surge in the number of COVID-19 cases and hospitalizations.

According to the State of Utah’s coronavirus dashboard, as of August 20, 2021, the current amount of intensive care unit beds occupied exceeds 87% with 31% COVID-related, and local health officials have warned that the State’s health care system, much of which is located within Salt Lake City limits, is being overwhelmed.

Furthermore, children under the age of 12 are not eligible for vaccination, and fewer than 50% of children between 12 and 18 are vaccinated in Salt Lake County. Because this population is vulnerable, largely unvaccinated, and required to be indoors at school for extended periods each day with similarly situated individuals, they are especially at risk of contracting and spreading the COVID-19 virus.

According to the data released on August 19, 2021, 144 children ages 5-13 in Utah tested positive for COVID-19 in one day, which results in 802 children testing positive for the virus in one week. Last year at this time, 128 children tested positive for COVID-19 during the same timeframe. Of the 802 children who have tested positive for COVID-19 in the past week, 533 of the cases are in 5-10 year-olds, compared to 62 last year.

Based on the rising cases of the Delta variant of COVID-19, the increase of hospitalizations in the State, the high transmissibility of the Delta variant, and the CDC’s guidance on mask wearing, the Mayor of Salt Lake City now desires to exercise her authority under Utah Code 53-2a to declare a local emergency and to issue an order related to mask wearing in Salt Lake City schools.

LOCAL EMERGENCY DECLARATION

Pursuant to Utah Code Section 53-2a-208 and City Code 22.03.010, the Mayor Erin Mendenhall makes the following proclamation declaring a local emergency:

1. **Finding of a Disaster; Nature of the Local Emergency.** The Mayor hereby finds that due to the increasing cases of COVID-19 and COVID-19 related ICU utilization, a disaster, as defined by Utah Code 53-2a-102(5) exists in Salt Lake City. This disaster necessitates a declaration of local emergency in the entirety of Salt Lake City.
2. **Conditions Causing the Emergency; Exigent Circumstances.** In July and August, 2021, the Delta variant of COVID-19 began rapidly spreading through the nation, the State of

Utah, and Salt Lake City. This variant of COVID-19, which is highly contagious, substantially increases the threat to public safety or health relative to the circumstances in existence when the City's first COVID-19 local emergency was terminated under HB294. The highly contagious Delta variant poses an imminent threat to public safety or health and was not known or foreseen and could not have been known or foreseen at the time the City's first COVID-19 local emergency was terminated under HB294. In fact, although the thresholds under HB294 have been repealed, the City has now exceeded two thresholds related to average reported daily cases and COVID-19 related ICU utilization. The highly contagious Delta variant causes the same serious symptoms associated with COVID-19, especially in the unvaccinated, including children and adults who are unable to receive the vaccination, as well as immunocompromised persons, which symptoms include hospitalization and sometimes death. These emergency conditions are sufficient exigent circumstances to justify the declaration of a second COVID-19 local emergency in Salt Lake City.

3. **Emergency Powers and Operations.** The emergency powers and operations of Salt Lake City are hereby invoked and Salt Lake City's personnel and resources are ordered and authorized to perform all functions authorized by federal, state, and local law to address this local emergency.

4. **Term.** This proclamation shall take effect immediately and will be ongoing for thirty (30) days unless an extension is authorized by the Salt Lake City Council by resolution or it is otherwise terminated.

5. **Assistance.** Salt Lake City is authorized to request all assistance available with respect to this local emergency from all federal, state, and local sources and is authorized to activate all applicable mutual aid agreements.

EMERGENCY ORDER: MASKS

Pursuant to Utah Code Section 53-2a-205, Utah Code 53-2a-209, and City Code 22.03.010, the Mayor Erin Mendenhall issues the following emergency order:

1. **Definitions.**

- a. Face mask means a mask that completely covers the nose and mouth, is made of tightly woven synthetic or natural fabrics, and fits snugly against the nose and sides of the face and under the chin.

Face mask does not include a mask with an exhalation valve, vent, or other hole or opening, or a mask that is crocheted or made of lace, mesh, or similar open weblike construction or material.

- b. Face Shield means a shield that covers the entire face—including the eyes, nostrils, and mouth of the wearer—is made of clear plastic or similar nonpermeable transparent material, and can be used in conjunction with a face mask for enhanced protection.

2. **Face Masks Mandatory in Schools.** All staff, visitors, members of the public, teachers, and students attending kindergarten through grade 12 at a public, charter, or private school in Salt Lake City, shall be required to wear a face mask when in any indoor area of the premises, on school-provided transportation, or attending an indoor school-sponsored activity, or outdoors on school premises when social distancing is not possible, subject to the exceptions below.

3. **Face Mask Exceptions.**

a. Notwithstanding any other provision of this proclamation, an individual required to wear a face mask may remove the face mask in the following situations:

- i. while outdoors if the individual is maintaining at least six feet of physical distance from any other individual from a separate household;
- ii. while actively eating or drinking, provided that the individual remains in place while eating or drinking;
- iii. while alone or only with other members of the same household in a room, cubicle, school-provided transportation, or similar enclosure;
- iv. when communicating with an individual who is deaf or hard of hearing if:
 1. communication cannot be achieved through other means; and
 2. the speaker wears a face shield or uses alternative protection such as a plexiglass barrier;
- v. while obtaining or providing a service that requires the temporary removal of the face mask, such as speech therapy services;
- vi. while actively performing as an athlete at a school organized or school sponsored athletic event;
- vii. while exercising or engaging in athletic training while:
 1. outdoors; or
 2. indoors and maintaining at least six feet of physical distance from any other individual from a separate household;
- viii. while swimming or on duty as a lifeguard; or
- ix. while rehearsing for or giving an educational, artistic, cultural, musical, or theatrical presentation or performance for an audience at a school.

b. The following individuals are exempt from the face mask requirements of this proclamation:


- i. a child who is younger than two years old;
- ii. an individual who is unconscious, incapacitated, or otherwise unable to remove the face mask without assistance;
- iii. an individual who has an Individualized Education Program (IEP) under the Individuals with Disabilities Education Act, 20 U.S.C. § 1414, or an accommodation under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, that would necessitate exempting the individual from wearing a face covering; and

- iv. an individual with a medical condition, mental health condition, or intellectual or developmental disability, that prevents the individual from wearing a face mask.

4. **Enforcement.** The purpose of this proclamation is to protect individuals' life, health, and safety and not to hold them criminally liable. Individuals within Salt Lake City are urged to voluntarily comply with this proclamation and every effort will be made to educate people to achieve compliance. However, pursuant to City Code 22.03.080, a person who violates this proclamation is guilty of a class B misdemeanor and upon conviction can be punished by a fine not to exceed \$1,000 and/or by imprisonment for a term no longer than 6 months. Nothing in this proclamation is intended to encourage or allow law enforcement to transgress individual constitutional rights. Prosecutors are encouraged to exercise discretion in making any charging decisions due to a violation of this proclamation.

5. **Filing and Dissemination.** This proclamation will be filed with the Salt Lake City Recorder and will be delivered to the State of Utah and Salt Lake County and will be disseminated to local media.

Dated this 20th day of August, 2021.


Erin Mendenhall (Aug 20, 2021 14:20 CDT)
Erin Mendenhall
Salt Lake City Mayor

ATTEST:


Cindy Lou Trishman (Aug 20, 2021 13:27 MDT)
Cindy Lou Trishman, City Recorder



Approved as to Form:


Katherine Lewis (Aug 20, 2021 13:10 MDT)
Katherine Lewis, Salt Lake City Attorney