To: City Council
Subject: Local State of Emergency Discussion
Meeting: Regular Council Special Meeting - 30 Jun 2020
Department: City Attorney
Staff Contact: Tom Yeadon, Attorney

BACKGROUND INFORMATION:
See attachment for memo.

ATTACHMENTS:
City State of Emergency
Local State of Emergency
MEMORANDUM

TO: East Lansing City Council

FROM: Thomas M. Yeadon, City Attorney

RE: Amendments to Civil Emergency Provisions

DATE: June 25, 2020

At the Council meeting on June 23, 2020 Mayor Beier asked for an ordinance that would provide the City with some additional tools to deal with the COVID pandemic. Council member Meadows asked for a written report on options the City has.

I have drafted an ordinance which would give the Mayor additional control over public property under emergencies. This is modeled after a Flint ordinance which gives the Mayor of Flint additional emergency powers. The Flint ordinance included curfew provisions and made the Mayoral orders invalid if the Governor acted to deal with the emergency. I removed those provisions because we already have a curfew ordinance and including a provision which made the Mayor’s orders invalid based on action taken by the Governor was not what I understood Council to want. I also limited the authority of the Mayor to exercise the control over public property instead of the broader authority that the Governor and Public Health Officials have in order to distinguish them. I also distinguished the current local state of emergency by referring to this as a City state of emergency. It will help in defending the ordinance if challenged. For that same reason, I did not include any ability to shut a business down.

Beyond this new ordinance expanding the Mayor’s authority and adopting orders, rules and regulations pursuant to its terms, as we discussed on the 23rd, Council has some other options as well in dealing with local issues surrounding the pandemic. In addition to or instead of adopting this or some other more direct ordinances, Council can seek to enforce the Governor’s current executive orders more strictly, seek enforcement of the provisions of the Motor Vehicle Code which prohibit blocking sidewalks or seek additional Gubernatorial Executive Orders or Health Official Executive Orders that better deal with local issues.

Obviously the latter two options present the least amount of potential liability for the City. Those offices are the offices that are already designated by State law to deal with issues such as this. To the extent Council does not find that satisfactory, we can seek to enforce the Governor’s existing executive orders but as I mentioned, there are issues with that.

It is a misdemeanor to violate the Governor’s orders and arguably someone can be prosecuted for that. However, I would caution against making custodial arrests for violations for a number of
reasons which include potential civil liability and our inability to control the future of the order and prosecution of the violation. If we did make a custodial arrest and sent the matter to the prosecutor’s office or Attorney General’s office for prosecution, there is no guarantee they would actually issue charges. If they did, there is no guarantee that the order will not be rescinded before a resolution of the case even if it did withstand a constitutional challenge. As we discussed, from a legal perspective I believe I can defend the action of simply asking people to voluntarily comply with the order and socially distance themselves, the issues arise if they do not comply.

With regard to sidewalk enforcement of the MVC, that is a civil infraction. As such tickets could be issued to persons who are, in fact, blocking the sidewalk with their bodies. Since we have never used this provision to prevent lines outside of bars, it will be fairly apparent the motivations are not simply to keep the sidewalks open. In that regard there may not be a valid defense to a claim that we were instead simply violating someone’s constitutional rights by enforcing it in this situation.

You may be wondering what the difference is between enforcing a Mayoral order under the newly proposed ordinance and enforcing a Governor’s order. While it still presents a risk of civil liability at least the City would control precisely how the order is drafted, the prosecution and results of its provisions, and that the order was not rescinded in the middle of a prosecution and, if it is, place a savings clause in the order of rescission.
AN ORDINANCE TO AMEND SECTION 10-34 OF AND TO ADD SECTIONS 10-34a THROUGH 10-34i TO ARTICLE II – EMERGENCY MANAGEMENT - OF CHAPTER 10 – CIVIL EMERGENCIES - OF THE CODE OF THE CITY OF EAST LANSING EMPOWER THE MAYOR TO DECLARE A CITY STATE OF EMERGENCY AND ISSUE ORDERS, RULES AND REGULATIONS REGARDING THE USE OF PUBLIC PROPERTY TO PROTECT LIFE AND PROPERTY IN SUCH AN EMERGENCY.

THE CITY OF EAST LANSING ORDAINS:

Section 28-52 of Chapter 28 of the Code of the City of East Lansing is hereby amended to read as follows:

Sec. 10-34. - Limitation of authority.

Nothing herein nor in the support emergency operations plan adopted hereunder shall be construed to abridge or curtail the powers of the mayor, the city council, the city manager, or other city official or employee who is provided independent authority to deal with any emergency situation either by Charter, statute, ordinance, or common law including, but not limited to, the following sections 10-34a through 10-34h.

Sec. 10-34a – Authority of Mayor to Proclaim.

During times of great public crises, epidemic, pandemic, disaster, rioting, catastrophe, or similar public emergency within this city, when public safety is imperiled, the Mayor may, and is hereby authorized to, after consultation with the Chief of Police and the Fire Chief, or their designated representatives, or those other said officials who are then reasonably available, and any other Department Head deemed necessary to the consultation by the Mayor, proclaim a city state of emergency and designate the city or area or areas of the city involved as being in a city state of emergency. This is in addition to the authority of the Mayor to declare a local state of emergency pursuant to MCL 30.410.
Sec. 10-34b - Determination to be in Writing.

The determination that a city state of emergency exists shall be made in writing by the Mayor and shall be supported by written reports from the heads of those City departments directly responsible for bringing the emergency under control. The reports shall set out in detail the exact nature of the crisis, disaster, rioting, catastrophe or other public emergency and shall indicate a need for emergency measures. Such written determination and supporting reports shall be filed with the City Clerk within a reasonable time after the City state of emergency has been declared and shall be public records.

Sec. 10-34c - Promulgation of Orders, Rules and Regulations.

Following such proclamation or declaration, the Mayor may, and is hereby authorized to promulgate such reasonable orders, rules and regulations in relation to the use of public property within the City as the Mayor deems necessary to protect life and property or to bring the emergency situation within the city or the affected area or areas of the city under control. This authority includes, but is not limited to, the ability to:

1. Limit the size and location of gatherings on public property.
2. The closure of streets, alleys, parks or other public places.
3. Regulate and/or prohibit pedestrian traffic, including the formation of lines on public streets.
4. Regulate the entry of persons into City buildings and structures.

Sec. 10-34d - Applicability.

Such orders, rules and regulations shall indicate the area or areas of the City which are subject to the orders, rules and regulations by clearly delineating the boundaries thereof. The time period during which the orders, rules and regulations are in effect shall be explicitly stated. The location to be affected by the orders, rules and regulations shall also be clearly designated.

Sec. 10-34e – Duration and Modification and Extension by Council.

Orders of the Mayor promulgated pursuant to Section 10-34c shall not be continued or renewed for a period in excess of 7 days except with the consent of the City Council. The City Council, at a general or special meeting as provided by City Charter, may by resolution amend, modify or rescind such orders, rules or regulations promulgated by the Mayor hereunder; provided, however, that such action by the City Council shall be by a majority of the Council members elected.

Sec. 10-34f - Modification by Mayor.

In the event that the City Council has not acted pursuant to the authority granted in Sec. 10-34e above to modify such orders, rules and regulations, that have been promulgated by the Mayor, they may be amended, modified or rescinded by the Mayor, from time to time, in like manner as provided in Sec. 10-34c and 10-34d of this ordinance, but shall cease to be in effect upon declaration by the Mayor that the emergency no longer exists.
Sec. 10-34g - Publication of Notice.

In the event orders, rules or regulations are promulgated by the Mayor and in the event such orders, rules and regulations are thereafter amended, modified or rescinded by the City Council or by the Mayor, reasonable notice of such orders, rules, regulations, amendments, modifications or rescissions shall be given to the public by press releases, publication in a newspaper of general circulation in the City, publication in a prominent place on the City’s website and, to the extent feasible, any other means that will notify the public of the orders, rules and regulations.

Sec. 10-34h - Intent.

It is hereby declared to be the legislative intent to invest the Mayor with sufficiently broad power of action in the exercise of the police power of the City with regard to the establishment and enforcement of such orders, rules or regulations to provide adequate control over persons and conditions during such periods of impending or actual public crisis or disaster. The provisions of this ordinance shall be broadly construed to effectuate that purpose.

Sec. 10-34i – Penalty.

It shall be a misdemeanor punishable by 90 days in jail and/or a fine of up to $500.00 to knowingly violate an order, rule or regulation promulgated by the Mayor pursuant to Sec. 10-34c or as amended by the City Council or Mayor pursuant to Sec. 10-34e and Sec. 10-34f, respectively.