

RESOLUTION NO. 2020-03

A RESOLUTION REQUESTING THAT THE GOVERNOR REOPEN RESTAURANT DINING AREAS CLOSED BY EXECUTIVE AND PUBLIC HEALTH ORDERS AND REFRAIN FROM DISCRIMINATION AGAINST NON-NEW MEXICAN TRAVELERS

WHEREAS, on March 11, 2020, the Governor of New Mexico issued Executive Order 2020-004, in response to an outbreak of a novel coronavirus identified as COVID-19, proclaiming a public health emergency in accordance with the Public Health Emergency Response Act and invoking and exercising all powers vested in the governor's office under the All Hazard Emergency Management Act and the Emergency Licensing Act; and

WHEREAS, this order caused all New Mexico Restaurants establishments to eliminate indoor dining, which caused the loss of countless jobs and lost revenues across the state of New Mexico; and

WHEREAS, on June 1, 2020, the governor decreed that restaurants could reopen their indoor dine-in service at 50% of their maximum occupancy in accordance with COVID-Safe Practices including 6-foot social distancing and strict sanitizing measures employed by the restaurant. A subsequent requirement that month included wearing masks by customers upon entry until seated; and

WHEREAS, as a result of this change, New Mexico restaurants expended their remaining funds to purchase required personal protective equipment (PPE) for employees and customers, reorganize and mark their respective restaurant layouts, remove tables and chairs to storage and install shielding in areas to facilitate compliance with social distancing, hire back people to fill the vacancies caused by the earlier mandated state shut-down, and other protective measures called for compliance with Governor's decree; and

WHEREAS, on July 13, 2020 Governor Lujan Grisham ordered the NM Department of Health to again close all indoor dining facilities across the state giving less than half of a week's notice to restaurant owners and their employees; and

WHEREAS, Southern New Mexico historically and indeed this month commonly experiences weeks of days where the ambient outdoor temperature is 100 to 118 degrees Fahrenheit, making any outdoor eating unhealthy for people to experience well past 9 PM; and

WHEREAS, the NM Department of Health states on its web site as well as in numerous documents that due to the dangers of acquiring a heat stroke, people in southern NM are encouraged to stay indoors in air conditioned spaces throughout the day and avoid conditions that could raise the body's temperatures to or above 104 degrees Fahrenheit; and

WHEREAS, this closure allowed restaurants only the choice of limited outdoor service or drive-up service to provide their meals regardless of whether or not the business could physically, functionally, or feasibly provide either service to its customers; and

WHEREAS, the governor furthered decreed that all visitors from out of state would be discouraged from traveling to our state by mandating a 14-day house arrest for quarantine purposes and restricting all out-of-state visitors from visiting any NM State Park; and

WHEREAS, the Governor, through the latest decree, has further decreed that the New Mexico Department of Public Safety, the New Mexico Department of Homeland Security and Emergency

Management, the Department of the Environment, and *all other* State departments and agencies, including the Taxation and Revenue Department, are authorized to take all appropriate steps to ensure compliance with this Order; and

WHEREAS, starting on July 14, 2020, agents of the Governor, including officers of the New Mexico State Police were ordered to and did therefore serve notices upon Pizza Inn of Carlsbad and the Trinity Hotel and Restaurant suspending their state-issued restaurant permits for allowing Dine-In eating; and

WHEREAS, restaurants have long been a crucial part of the small business backbone of not only New Mexico's economy, but also of our nation's economy; and

WHEREAS, restaurants contribute a significant amount of gross receipts tax revenue to the state and city coffers, which is the primary funding sources for municipal funding of most of the municipality's essential services including fire, police, street maintenance, and permitting; and

WHEREAS, the blanket closure of all indoor dining facilities poses a significant threat to the ultimate survival of those businesses and to our city's and our State's economy and overall ability to provide essential food services to their constituents; and

WHEREAS, there are no scientific studies to corroborate the assumption that indoor dining, when practiced in a responsible manner as mentioned above, has any greater causation of COVID-19 spread than shopping at local retail stores or drive-through food service; and

WHEREAS, both the Governor and James Kenney, the Secretary of the New Mexico Environment Department, have both indicated publicly that restaurants were not shown to be the cause of any spike in virus cases; and

WHEREAS, the modeling of the spread of COVID-19 has changed multiple times with almost all changes being a decrease in the number of expected infections and deaths; and

WHEREAS, the vast majority of cases of and deaths due to COVID-19, occur in the NM Counties of Bernalillo, Sandoval, McKinley, Dona Ana, and San Juan, while all of the counties in southeastern NM have far lower infection and death rates; and

WHEREAS, there appears to be no definitive plan by the State and there have been written statements by the Governor's staff to indicate that reopening restaurants will be delayed until there is no COVID virus left to spread that would cause increases in the state's defined gate rate; and

WHEREAS, the national Centers for Disease Control has indicated that it could be at least two years (if ever) before a vaccine is perfected and longer to distribute it among the population in order to effectively eradicate the disease from the public; and

WHEREAS, under our state's constitutional separation of powers, the Governor may neither infringe upon legislative authority with respect to existing law nor with respect to the power of the legislature to change law in the future; and

WHEREAS, it is apparent that the Department of Health and Governor have decreed that violation of the aforementioned public health order is now considered a criminal act.

NOW, THEREFORE, the Carlsbad Department of Development, finds:

1. The Governor of the State of New Mexico has failed to scientifically validate the need to eliminate indoor dining amongst New Mexico restaurants practicing accepted social distancing, sanitization procedures and encouraging proper protective measures for its customers and employees.
2. If the State does not immediately allow these restaurants to reopen their indoor dining, many, if not most of these businesses will never recover, and the economy of the City of Carlsbad and Eddy County, as well as the State, will suffer.
3. Restrictions prohibiting enjoyment of public parks and mandatory house arrests against United States citizens lawfully visiting our state based upon whether or not they are New Mexico residents is unlawfully discriminatory in purpose and furthermore unlawfully restricts both interstate commerce and interstate travel.
4. The harm to the economy of the City of Carlsbad and Eddy County, as well as the State, under the current restrictions are more damaging to the long-term welfare of the state than the threat posed by the virus. The order is creating a negative impression of our state from the national retail and restaurant industry.
5. The Governor has exceeded her authority under the New Mexico State Constitution by criminalizing the public health order with the purpose to increase maximum fines and threaten incarceration.

NOW, THEREFORE, the Carlsbad Department of Development strongly encourages the Governor of New Mexico and the Secretary of the New Mexico Department of Health Department to do the following:

1. Allow southern New Mexico restaurants to offer indoor dining with the condition that reasonable and prudent social distancing, PPE and sanitization procedures are abided by and practiced therein.
2. Lift illegal discriminatory travel order, prohibition on usage of public parks, and mandatory house arrest aimed at visitors from other states.

PASSED, APPROVED and ADOPTED on this 15th day of July, 2020, by the Carlsbad Department of Development Executive Board of Directors.

CRAIG STEPHENS,
President of the Board of Directors,
Carlsbad Department of Development

Attest:

JOHN P. WATERS,
Executive Director,
Carlsbad Department of Development