RESOLUTION NO. 2020-267

WHEREAS, in December 2019, a novel coronavirus, now designated Coronavirus disease 2019 (COVID-19), was detected in Wuhan City, Hubei Province, China; and

WHEREAS, on March 11, 2020, the World Health Organization declared COVID-19 as a pandemic and urged that all countries take urgent and aggressive action; and

WHEREAS, on March 13, 2020, the President of the United States declared a national emergency regarding COVID-19; and

WHEREAS, on March 13, 2020, Governor Greg Abbott declared a state of disaster due to COVID-19; and

WHEREAS, on March 13, 2020, the City of Waco closed to the public the Waco-McLennan County libraries, the Cameron Park Zoo, City of Waco Community Centers, City of Waco Senior Centers, Waco Convention Center & Visitors' Bureau, and the Texas Ranger Hall of Fame, said closure to occur on March 14, 2020; and

WHEREAS, on March 13, 2020, the Mayor of the City of Waco and the Waco-McLennan County Public Health District ("Health District") continued to urge persons to cancel, reschedule, and/or not attend gatherings attended by more than 250 people and made other recommendations regarding social distancing; and

WHEREAS, on March 15, 2020, the Centers for Disease Control ("CDC") lowered the recommended number of persons at mass gatherings to 50 persons; and

WHEREAS, on March 16, 2020, the CDC lowered the recommended number of persons at mass gatherings to 10 persons; and

WHEREAS, on March 17, 2020, Mayor Kyle Deaver issued a declaration of local disaster and public health emergency after determining that extraordinary and immediate measures had to be taken to respond quickly to prevent and slow down community spread of COVID-19; and

WHEREAS, on March 19, 2020, Mayor Deaver, McLennan County, and Governor Abbott issued orders, prohibiting social gatherings in excess of 10 people; and

WHEREAS, on March 22, 2020, the Governor issued orders dealing with hospital care during this crisis; and

WHEREAS, at his March 22, 2020 press conference, the Governor acknowledged that the urban centers may need to enact more stringent measures to address this public health emergency and stated that he would applaud the cities for doing so; and

WHEREAS, on March 23, 2020, Mayor Deaver modified the local state of disaster and public

health emergency to require sheltering at home; and

WHEREAS, on March 24, 2020, the Mayor and the City Council renewed, restated, and continued the local state of disaster and public health emergency until April 7, 2020; and

WHEREAS, on March 31, 2020, the Mayor and the City Council renewed, restated, and continued the local state of disaster and public health emergency until April 21, 2020; and

WHEREAS, on April 14, 2020 by Resolution No, 2020-247, the Mayor and the City Council renewed, restated, and continued the local state of disaster and public health emergency until April 30, 2020; and

WHEREAS, on April 17, 2020, the Governor issued several executive orders, including Executive Order GA 16, which allows non-essential, retail businesses to reopen at 12:01 a.m. on Friday, April 24, 2020, for pick up, delivery by mail, and delivery to the customer's doorstep; and

WHEREAS, Executive Order GA 16 was a statewide order that applied in the City of Waco, on April 21, 2020, by Resolution No. 2020-263, the Mayor and the City Council renewed, restated, and continued the local state of disaster and public health emergency, and modified the Order in compliance with the Governor's order; and

WHEREAS, as of April 27, 2020, there are 25,297 persons confirmed to have COVID-19 in Texas, with 87 of those residing in McLennan County; and

WHEREAS, as of April 27, 2020, 663 Texans have died from COVID-19, four of whom resided in McLennan County; and

WHEREAS, as of April 27, 2020, there are only 13 active, COVID-19 cases in McLennan County; and

WHEREAS, on April 27, 2020, Governor Abbott issued several executive orders, including Executive Order GA 18, which begins a phased re-opening of Texas businesses; and

WHEREAS, the City is modifying its order to be in compliance with the Governor's order; and

WHEREAS, because of the risk of the rapid spread of the virus, the need to protect the most vulnerable members of the community, the intent to ensure that the maximum number of people self-isolate in their places of residence to the maximum extent feasible, while enabling essential services to continue, and the desire to slow the spread of COVID-19 to the maximum extent possible, this Order is required; and

WHEREAS, this Order is issued based on evidence of increasing occurrence of COVID-19 within the City and throughout the Central Texas area, scientific evidence and best practices regarding the most effective approaches to slow the transmission of communicable diseases generally and

COVID-19 specifically, and evidence that the age, condition, and health of a significant portion of the population of the City places it at risk for serious health complications, including death, from COVID-19; and

WHEREAS, making the problem worse, some individuals who contract the COVID-19 virus have no symptoms or have mild symptoms, which means they may not be aware they carry the virus; and

WHEREAS, because even people without symptoms can transmit the disease, and because evidence shows the disease is easily spread, gatherings can result in preventable transmission of the virus; and

WHEREAS, the scientific evidence shows that at this stage of the emergency, it is essential to slow virus transmission as much as possible to protect the most vulnerable and to prevent the health care system from being overwhelmed. One proven way to slow the transmission is to limit interactions among people to the greatest extent practicable. By reducing the spread of the COVID-19 virus, this Order helps preserve critical and limited healthcare capacity in the City; and

WHEREAS, local health officials, the local hospitals, and the Health District are all calling for this action to flatten the curve of the virus transmission, and have warned that not taking action could result in the medical resources of McLennan County being overcome; and

WHEREAS, a declaration of local disaster and public health emergency includes the ability to reduce the possibility of exposure to disease, control the risk, promote health, compel persons to undergo additional health measures that prevent or control the spread of disease, including isolation, surveillance, quarantine, or placement of persons under public health observation; and

WHEREAS, the City Council has determined that extraordinary and immediate measures must be taken to respond quickly to prevent and slow down community spread of COVID-19; and

WHEREAS, the City Council finds that it is in the public interest to authorize additional authority as described herein pursuant to the Texas Disaster Act of 1975, as amended, Vernon's Texas Government Code, and provide rules to protect the health of persons in the City pursuant to the Texas Government Code, as amended, and the Texas Health and Safety Code,

NOW, THEREFORE, BE IT RESOLVED AND ORDERED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF WACO, TEXAS:

1. The foregoing recitals are incorporated herein and made findings of fact.

2. That the previously declared local state of disaster and public health emergency for the City of Waco, Texas is hereby renewed, restated, and continued, as amended herein.

3. That pursuant to §418.108(b) of the Texas Government Code, the state of disaster shall continue until 11:59 p.m. on May 15, 2020, unless continued, renewed, or rescinded by the

City Council of the City of Waco.

4. That pursuant to §418.108(c) of the Texas Government Code, this renewal, restatement, and continuance of the declaration of a local state of disaster shall be given prompt and general publicity and shall be filed promptly with the City Secretary.

5. That pursuant to §418.108(d) of the Texas Government Code, this renewal, restatement, and continuance of the declaration of a local state of disaster activates the City's emergency management plan.

6. In compliance with the Governor's Order, all individuals currently living within the City of Waco, Texas (the "City") may leave their residences only for Essential Activities, Essential Governmental Functions, or to operate or patronize Essential Businesses or Re-Opened Businesses, all as defined in Section 9. Individuals experiencing homelessness are exempt from this Section, but are strongly urged to obtain shelter, and entities are strongly urged to make such shelter available as soon as possible and to the maximum extent practicable (and to utilize Social Distancing Requirements in their operation). To the extent individuals are using shared or outdoor spaces, they must at all times as reasonably possible maintain social distancing of at least six feet from any other person (other than persons in the same household) when they are outside their residence.

7. All businesses with a facility in the City, except Essential Businesses and Re-Opened Businesses as defined below in Section 9, are required to cease all activities at facilities located within the City except Minimum Basic Operations, as defined in Section 9. For clarity, businesses may also continue operations consisting exclusively of employees or contractors performing activities at their own residences (i.e., working from home). To the greatest extent feasible, Essential Businesses and Re-Opened Businesses should comply with Social Distancing Requirements as defined in Section 9 and "Texas Helping Texans: The Governor's Report to Open Texas of April 27, 2020" and as amended by the Governor (hereafter referred to as the "Open Texas Report").

8. People riding on public transit must comply with the Minimum Standard Health Protocols for Retail Customers in the Open Texas Report and Social Distancing Requirements as defined in Section 9 below, to the greatest extent feasible.

9. <u>Definitions and Exemptions</u>.

a. For purposes of this Order, individuals may leave their residence only to perform any of the following "Essential Activities:"

i. To engage in activities or perform tasks essential to their health and safety, or to the health and safety of their family or household members (including, but not limited to, pets), such as, by way of example only and without limitation, obtaining medical supplies or medication, visiting a health care professional, or obtaining supplies they need to work from home;

ii. To obtain necessary services or supplies for themselves and their family or household

members, or to deliver those services or supplies to others, such as, by way of example only and without limitation, canned food, dry goods, fresh fruits and vegetables, pet supply, fresh meats, fish, and poultry, and any other household consumer products, and products necessary to maintain the safety, sanitation, and essential operation of residences;

iii. To engage in outdoor activity, such as, by way of example and without limitation, walking, hiking, running or riding a bicycle. Except for members of a residence who are sheltering together, the individuals shall comply with Social Distancing Requirements as defined in this Section;

iv. To perform work providing essential products and services at an Essential Business or to otherwise carry out activities specifically permitted in this Order, including Minimum Basic Operations; and

v. To care for a family member or pet in another household.

But people at high risk of severe illness from COVID-19 and people who are sick are urged to stay in their residence to the extent possible except as necessary to seek medical care.

b. For purposes of this Order, individuals may leave their residence to work for or obtain services at any "Healthcare Operations" including hospitals, clinics, dentists, pharmacies, pharmaceutical, and biotechnology companies, other healthcare facilities, healthcare suppliers, home healthcare services providers, mental health providers, or any related and/or ancillary healthcare services. "Healthcare Operations" also includes veterinary care and all healthcare services provided to animals. This exemption shall be construed broadly to avoid any impacts to the delivery of healthcare, broadly defined. "Healthcare Operations" does not include fitness and exercise gyms and similar facilities.

c. For purposes of this Order, individuals may leave their residence to provide any services or perform any work necessary to the operations and maintenance of "Essential Infrastructure," including, but not limited to, construction, airport operations, water, sewer, gas, electrical, oil refining, roads and highways, public transportation, solid waste collection and removal, internet, and telecommunications systems (including the provision of essential global, national, and local infrastructure for computing services, business infrastructure, communications, and web-based services), provided that they carry out those services or that work in compliance with Social Distancing Requirements as defined this Section, to the extent possible.

d. For purposes of this Order, all first responders, emergency management personnel, emergency dispatchers, court personnel, and law enforcement personnel, and others who need to perform essential services are categorically exempt from this Order. Further, nothing in this Order shall prohibit any individual from performing or accessing "Essential Governmental Functions," as determined by the governmental entity performing those functions. Each governmental entity shall identify and designate appropriate employees or contractors to continue providing and carrying out any Essential Governmental Functions. All Essential Governmental Functions shall be performed in compliance with Social Distancing Requirements as defined in this Section, to the extent possible.

e. For the purposes of this Order, covered businesses include any for-profit, non-profit, or educational entities, regardless of the nature of the service, the function they perform, or its corporate or entity structure.

f. For the purposes of this Order, "Essential Businesses" means every business listed by the U.S. Department of Homeland Security (DHS) in its Guidance on the Essential Critical Infrastructure Workforce, Version 3.0 or any subsequent version, plus religious services conducted in churches, congregations, and houses of worship. Other essential services may be added to this list with the approval of the Texas Division of Emergency Management (TDEM). TDEM shall maintain an online list of essential services, as specified in this executive order and any approved additions.

g. For the purposes of this Order, "Re-Opened Businesses" mean:

i. Retail businesses that are not Essential Businesses may provide retail services through pick up, delivery by mail, or delivery to the customer's door step;

ii. Retail establishments that provide in-store retail services but only at 25 percent of the total listed occupancy of the business;

iii. Restaurants and other facilities that prepare and serve food for dine-in restaurant services but only at 25 percent of the total listed occupancy of the restaurant, provided that:

a. This only applies to restaurants that have less than 51 percent of their gross receipts from the sale of alcoholic beverages and therefore are not required by the Texas Alcoholic Beverage Commission to post the 51 percent sign; and

b. Valet services are prohibited except for those vehicles with placards/plated for disabled parking;

iv. Movie theaters but only at 25 percent of the total listed occupancy for any individual theater for any screening;

v. Shopping malls but only at 25 percent of the total listed occupancy of the shopping mall, provided, however, that within the shopping malls, the food-court dining areas, play areas, and interactive displays and settings shall remain closed;

vi. Museums and libraries but only at 25 percent of the total listed occupancy, provided that any interactive components or functions, such as child play areas, shall remain closed;

vii. Individuals working alone in an office;

viii. Golf course operations; and

ix. Such additional businesses as may be enumerated by future orders or proclamations of the Governor.

For Re-Opened Businesses, the businesses should comply with the Social Distancing Requirements of this section and the Minimum Standard Health Protocols in the Open Texas Report. For Reopened Services having a 25% occupancy restriction, it is the business owner and/or operator's obligation and duty to assure that the occupancy restriction is not exceeded. Failure to do so is a violation of this Order.

h. For the purposes of this Order, "Minimum Basic Operations" include the following, provided that employees comply with Social Distancing Requirements as defined this Section, to the extent possible, while carrying out such operations:

i. The minimum necessary activities to maintain the value of the business's inventory, ensure security, process payroll and employee benefits, or for related functions; and

ii. The minimum necessary activities to facilitate employees of the business being able to continue to work remotely from their residences.

i For purposes of this Order, residences include hotels, motels, shared rental units, and similar facilities.

j. For purposes of this Order, "Social Distancing Requirements" includes maintaining at least six-foot social distancing from other individuals, washing hands with soap and water for at least twenty seconds as frequently as possible or using hand sanitizer, covering coughs or sneezes (into the sleeve or elbow, not hands), regularly cleaning high-touch surfaces, and not shaking hands.

10. Businesses except for Essential Businesses and Re-Opened Businesses shall remain closed except for maintaining Minimum Basic Operations as defined herein..

11. When people need to leave their places of residence, whether to obtain or perform vital services, or to otherwise facilitate authorized activities necessary for continuity of social and commercial life, they should at all times as reasonably possible comply with Social Distancing Requirements as defined in Section 9 above.

12. All public, private, and commercial laboratories operating within the City of Waco and performing COVID-19 testing shall report by 5:00 p.m. each day for the prior 24-hour period to the Health District:

    a. the number of COVID-19 tests performed; and
    b. the number of positive COVID-19 tests.

    Such laboratories shall not provide names or other individually identifiable health information that could be used to identify an individual patient. This information will be used solely for public health purposes to monitor the testing conducted in the City and mitigate and contain the spread of COVID-19.

13. That the following sections of the Code of Ordinances, City of Waco, Texas, are hereby suspended or modified until the state of disaster is terminated or until there is a subsequent resolution of this Council, whichever occurs first:

    a. § 7-54 which prohibits the expenditure of public funds in carrying out any emergency management activity without council approval;

b. § 24-127 which limits the City Manager's authority on expenditures;

c. Article VI City Council Meeting Procedures of Chapter 2 to the extent that it requires in person participation and/or public comment on agenda items.

14. That any City ordinance or regulation imposing a time requirement for payment, filing, or appealing a decision, may be extended by the Mayor without further confirmation by the City Council.

15. That the Mayor may suspend or modify any other ordinance or regulation of the City of Waco for a period of not more than seven days from the date of this resolution unless continued or renewed by the City Council of the City of Waco.

16. That no development applications, zoning applications, special permit, or variance applications that require approval from the Plan Commission, Board of Adjustment, Historic Landmark Commission, or the City Council shall be accepted until April 7, 2020, or earlier upon approval by the City Manager of a method of accepting applications other than in person.

17. That the halting of disconnections of water service because of payment delinquency is ratified and that for water accounts that are currently delinquent and would typically be scheduled for disconnection, no additional late fees will be applied if payment arrangements are made while this Resolution is in place.

18. That any fines or fees may be suspended or discontinued by the Mayor.

19. That City Council meetings may be conducted in accordance with alternate measures as permitted by law.

20. That all other, in-person boards and commission meetings are suspended. The following boards and commissions' meetings may be conducted in accordance with alternate measures (not in person meetings) as permitted by law:

    a. Boards and Commissions Committee;
    b. Budget and Audit Committee;
    c. Building Standards Commission;
    d. Plan Commission;
    e. Waco McLennan County Public Health District;
    f. Waco Metropolitan Planning Organization Policy Board;
    g. Zoning Board of Adjustment;
    h. 2020 Census Complete Count Committee; and
    i. Any board or commission meeting as required to consider applications subject to state law-imposed deadlines.

With permission of the City Manager, boards and commissions, other than the ones listed above in a. through i., may conduct meetings in accordance with alternate measures (not in person meetings) as permitted by law.

21. That the City Manager or the designee of the City Manager is authorized, without further approval of the City Council, to:

    a. Make application for local, state, and federal assistance as necessary and/or applicable;
    b. Accept on behalf of the City services, gifts, grants, equipment, supplies, and/or materials whether from private, nonprofit, or government sources;
    c. Enter into interlocal cooperation agreements or memorandums of understanding with other cities, counties, or jurisdictions to provide for law enforcement assistance or other shared services to assist in this resolution or the COVID-19 pandemic; and
    d. Contract for expenditures for budgeted items and emergency expenditures in an amount not to exceed $250,000.

    After cessation of this emergency, the City Manager shall provide the City Council a list of all actions taken under this paragraph.

22. That although not required by law and out of an abundance of caution, the City Manager or the designee of the City Manager is authorized to (and any prior acts are ratified):

    a. Close, including a closure to the public, of any City offices, facilities, or properties, including parks, playgrounds, or playground equipment; and
    b. Provide city services by means other than in person delivery, such as accepting permit applications online or by mail only, and/or to cease any city services that are not required by state or federal law.

23. That any ordinances, rules, or regulations of the City of Waco, Texas, that conflict with this Resolution are hereby suspended, such suspension to remain in effect until the state of disaster is terminated or until there is a subsequent resolution of this Council, whichever occurs first.

24. That pursuant to § 418.020 (d) of the Texas Government Code, the City of Waco is authorized to:

    a. Temporarily or permanently acquire by lease, purchase, or other means sites required for installation of temporary housing units or emergency shelters for disaster victims; and
    b. Enter into arrangements necessary to prepare or equip the sites to use the housing units or shelters, including arrangements for the purchase of temporary housing units or shelters and the payment of transportation charges.

25. That pursuant to § 122.006 of the Texas Health and Safety Code, the City of Waco and the Health District are authorized to adopt rules to protect the health of persons in the City of Waco, including quarantine rules to protect residents against communicable disease and provide for establishment of quarantine stations, emergency hospitals, and other hospitals.

26. That the City of Waco must promptly provide copies of this Resolution by posting it on the City of Waco website. In addition, the owner, manager, or operator of any facility that is likely to be impacted by this Resolution is strongly encouraged to post a copy of this Resolution onsite and to provide a copy to any member of the public asking for a copy.

27. Failure to comply with any of the provisions of this Order constitutes an imminent threat to public health.

28. That a violation of this order shall be a Class C misdemeanor and the penalty for violating this Resolution shall be a fine of not less than one dollar ($1.00) and no more than one thousand dollars ($1,000.00), and each day a violation exists shall be a separate offense. That this declaration also hereby authorizes the use of any other lawfully available enforcement tools.

29. That any violation of this resolution can be enjoined by a suit filed in the name of the City of Waco in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this resolution or in the Code of Ordinances, City of Waco, Texas.

30. That nothing in this resolution shall be construed to affect any suit or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or prior ordinance; nor shall any legal right or remedy of any character be lost, impaired, or affected by this resolution.

31. All provisions of this Resolution should be interpreted to effectuate this intent.

32. That the terms and provisions of this resolution shall be deemed to be severable and that if any section, subsection, sentence, clause, or phrase of this resolution shall be declared to be invalid or unconstitutional, the same shall not affect the validity of any other section, subsection, sentence, clause, or phrase of this resolution and the remainder of such resolution shall continue in full force and effect the same as if such invalid or unconstitutional provision had never been a part hereof.

33. That this resolution is effective at 12:01 a.m. on Friday, May 1, 2020.

PASSED, APPROVED and ORDERED this 28th day of April, 2020.

Kyle Deaver, Mayor
Waco, Texas

ATTEST:

Esmeralda Hudson, City Secretary

APPROVED AS TO FORM & LEGALITY:

Jennifer Richie, City Attorney

RECEIVED

APR 29 2020

CITY SECRETARY'S OFFICE