



Alaska

March 20, 2020

The Honorable Forrest Dunbar, Chair  
Anchorage Assembly  
*by email:* [testimony@muni.org](mailto:testimony@muni.org)

**Re: Expansion of the Mayor's Powers in Public Health Emergencies**

Dear Chair Dunbar:

The American Civil Liberties Union (ACLU) of Alaska thanks you for the opportunity to provide feedback on Anchorage Ordinance 2020-34(S), which would expand the powers of the Mayor of the Municipality of Anchorage in public health emergencies. As government takes the necessary steps to ensure public health, it must also safeguard people's civil rights and liberties, particularly rights to due process, privacy, and equal protection. Unfortunately, history teaches us that our government is most prone to committing abuses in times of crisis, and we must ensure that broad powers are not misused beyond legitimate needs. We offer our recommendations here for eight amendments based on key principles to ensure that the Municipality strikes the appropriate balance between providing for public health and wellbeing while protecting everyone's civil liberties.

**Any government restrictions on liberty must be scientifically justified, and the least restrictive measures available to protect the public health.**

The ACLU has always recognized that, during a contagious disease outbreak, such as this COVID-19 pandemic, individual rights must sometimes give way to the greater good. To a disease, we are not just individual hosts but a big, collective biomass. It is crucial, therefore, that restrictions on liberty, such as isolation or quarantine measures, are scientifically justified in their effectiveness and proportionality. The decisions of government actors in public health emergencies should be based on science and the recommendations of public health experts, not politics or prejudice.

**Recommended amendment: clarification that public health emergency designations are based on science and public health expertise**

As currently written, AO 2020-34(S) does not make explicit that a public health emergency is, by definition, grounded in the scientific judgment of public health experts. “Public health emergency” is currently defined as “an occurrence or imminent threat of an illness or health condition that is believed to be caused by” infectious agents and the like (p2, lines 1-20). We recommend amending the ordinance to clarify that a designation of a public health emergency requires the identification of a threat by public health experts, such as the federal Centers for Disease Control and Prevention, or state and local public health experts.

**Recommended amendment: requiring that the mayor act in alignment with public health guidance**

As currently written, AO 2020-34(S) uses the phrase “concurrence of the municipal medical officer” for certain provisions, and “in consultation with the municipal medical officer” for others. Notably, only “consultation,” not “concurrence,” is required for the mayor:

- to subject individuals to “testing, screening, or an examination” (p3, lines 20-26);
- to “order administration of medication or other medical treatment” (p5, lines 14-18);
- and
- to “isolate or quarantine and individual or groups of individuals” (p5, lines 37-44).

Because consultation does not require concurrence, a mayor could act to restrict liberties based on considerations other than public health recommendations; popular opinion, fear, bias, and stigma can be powerful pressures on elected officials in an outbreak. We recommend amending the ordinance to replace “consultation with the municipal medical officer” with “concurrence of the municipal medical officer” in the relevant provisions.

**Recommended amendment: ensuring that government choose the least restrictive measures consistent with public health guidance**

While individual liberties must give way to protecting the public in an outbreak, government actors should always choose the least restrictive measures to achieve public health goals. As currently written, AO 2020-34(S) gives the mayor broad powers to test, screen, treat, isolate, and quarantine, but does not explicitly bound those powers within this important principle. We recommend amending the ordinance to clarify that the powers of the mayor in a public health emergency should always default to the least restrictive measures available to protect public health.

**Any government restrictions on liberty must be continually re-evaluated to ensure they remain justified in light of scientific evidence as conditions evolve.**

As we have seen in recent weeks, an infectious disease outbreak can evolve rapidly, and the measures needed to combat it should evolve as well. Government actors should be continuously re-evaluating interventions, particularly as conditions abate, to ensure they align with public health guidance in the least restrictive way available.

**Recommended amendment: require regular re-evaluation of emergency measures**

The mayor's authority to issue emergency proclamations, as described in Anchorage Municipal Code section 3.80.040, does not require that emergency orders be time-limited; the Assembly, however, has the Charter-granted authority to end an emergency declaration.<sup>1</sup> Because public health emergencies can extend over a long period of time, and the scientifically justified interventions may need to change over that time, we recommend that AO 2020-34(S) be amended to enable the Assembly to regularly re-evaluate emergency measures in light of changing conditions and public health guidance by requiring regular reports from the Mayor to the Assembly about the state of the emergency and the Municipality's response.

**Anyone subject to mandatory medical procedures, isolation, or quarantine must have due process rights, including the right to challenge those orders before a neutral decision-maker and the right to legal counsel. Anyone subject to mandatory medical procedures, isolation, or quarantine should be informed of these rights.**

The right to receive (or not receive) any medical procedure, such as tests, screenings or treatments, consistent with a person's expressed wishes or best interests, is anchored in the fundamental civil liberties principles of autonomy and self-determination, privacy, liberty, and the freedom of thought and religion. Individuals who challenge a mandatory medical procedure or orders to constrain their liberty ought to have access to counsel and be informed of their rights.

**Recommended amendment: ensure those who challenge mandatory medical testing, screening, or treatment have access to counsel and are informed of their rights**

While AO 2020-34(S) contemplates that an individual may object to mandatory testing orders and provides for a hearing before the court (p4, lines 47-49 and p5, lines 1-5), and also allows that voluntary isolation or quarantine measures may substitute for involuntary medical treatment (p5, lines 20-24), it does not ensure those subject to mandatory testing, screening, or quarantine have access to counsel, nor does it require that individuals be informed of their right to challenge these

---

<sup>1</sup> Anchorage Municipal Charter, section 5.02(d).

mandatory orders. We recommend amending the ordinance to ensure these protections are in place.

**Recommended amendment: remove cost barriers from the exercise of the right to refuse mandatory medical treatment**

AO 2020-34(S) currently allows for the refusal of mandatory medical treatment, particularly when isolation or quarantine measures are determined by the mayor or municipal medical officer as an acceptable substitute to prevent the spread of a communicable disease (p5, lines 20-24). This provision nevertheless allows the mayor to penalize those who refuse medical treatment by charging them for “all costs incurred by the municipality” to effectuate an isolation or quarantine order. A person may have valid reasons to refuse a medical treatment, and may even voluntarily self-isolate or self-quarantine in lieu of treatment. The imposition of a financial penalty, however, may make these choices illusory for those who are economically disadvantaged. Just as disease doesn't distinguish between rich and poor, neither do our civil rights and liberties.

**Recommended amendment: remove the threat of “indefinite” quarantine or isolation for those refusing medical treatment**

As currently written, AO 2020-34(S) allows the mayor to notify individuals who refuse mandatory treatment that they may be subject to “an indefinite period of quarantine or isolation” (p5, lines 29-33). A period of quarantine or isolation should only last as long as is medically indicated; to inform people who exercise their right to refuse medical treatment that the Municipality may indefinitely isolate them is not based on medical justification, and seems only designed to coerce compliance.

**Recommended amendment: ensure those who challenge mandatory isolation or quarantine orders have the right to legal counsel and are informed of their rights**

As currently written, AO 2020-34(S) grants an individual the right to a hearing before the superior court to challenge an isolation or quarantine order (p8, lines 22-42). We recommend amending this section to include the right to legal counsel, and the requirement that anyone subject to mandatory isolation or quarantine orders be informed of their due process rights.

**Any government restrictions on liberty must not be imposed or implemented in a manner that discriminates against individuals on the basis of a protected characteristic (race, religion, national origin, LGBTQ+ status, etc.).**

The Municipality of Anchorage has codified the important and fundamental value of equal rights and nondiscrimination in its comprehensive, inclusive civil nondiscrimination ordinance. This same value should hold in any mayor's exercise

of their public health emergency powers. Unfortunately, history shows that infectious disease may become associated in the public imagination with a particular group of people, and may trigger prejudices. Infectious diseases do not discriminate, and neither should the actions our government takes to protect us from them. The amendments proposed above—to clarify that the declaration of public health emergencies is based on scientific evidence, and that interventions require the “concurrence” of a public health official—will also serve to ensure that restrictions on liberty are not guided by prejudice, but by science and public health expertise.

**Anyone under mandatory quarantine orders must be given access to adequate food, medical supplies, and other basic necessities.**

AO 2020-34(S) provides that the Municipality address the basic needs of individuals subject to mandatory isolation or quarantine orders outside their home (p6, lines 35-41). We ask that the Assembly consider how to support access to such needs for individuals under mandatory isolation or quarantine orders within their usual place of residence as well.

Thank you for the opportunity to share our feedback on AO 2020-34(S). We appreciate the Assembly’s diligence and attentiveness to the civil liberties issues invoked in the exercise of the broader emergency powers being contemplated. We remain ready as a resource to you as new issues emerge in the current pandemic.

Sincerely,

A handwritten signature in blue ink that reads "Triada Stampas". The signature is written in a cursive, flowing style.

Triada Stampas  
Policy Director

cc: Members of the Anchorage Assembly