

ORDINANCE NO. 13-2020

AN EMERGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COCOA, FLORIDA REQUIRING FACE COVERINGS IN PLACES OPEN TO THE PUBLIC THROUGHOUT THE CITY OF COCOA IN ORDER TO MINIMIZE THE SPREAD OF THE COVID-19 VIRUS, SUBJECT TO CERTAIN EXCEPTIONS; REQUIRING CERTAIN BUSINESS ESTABLISHMENTS OPEN TO THE PUBLIC TO POST WRITTEN NOTICE AT ENTRANCES REGARDING THE REQUIREMENTS OF THIS ORDINANCE; PROVIDING FOR COMPLIANCE, PENALTIES AND ENFORCEMENT; PROVIDING FOR PERIODIC REVIEW OF THIS ORDINANCE BY COUNCIL AND FUTURE TERMINATION AS DEEMED NECESSARY BY THE CITY COUNCIL; PROVIDING FOR THE REPEAL OF PRIOR INCONSISTENT ORDINANCES AND RESOLUTIONS; NON-CODIFICATION; APPLICABILITY; SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, this is an emergency ordinance of the City Council of the City of Cocoa, Florida enacted pursuant to Section 166.041(3)(b), Florida Statutes and Section 2-54 of the City Code, and has been approved by at least 2/3 vote of the City Council; and

WHEREAS, the coronavirus ("COVID-19") is a respiratory illness caused by a virus that can spread rapidly from person to person, and may result in serious illness and death; and

WHEREAS, the City Council of Cocoa finds that COVID-19 presents a danger to health, safety and welfare of the public and emergency public health measures are required to mitigate against the spread of COVID-19; and

WHEREAS, the City Council has previously proactively directed the implementation of numerous efforts encouraging employees and the public to practice social distancing, wash and sanitize their hands, and clean high touch surfaces; and

WHEREAS, pursuant to Resolution 2020-172, the City Council has also previously urged persons to social distance in public and wear a face covering in places open to the public throughout the City of Cocoa to minimize the spread of the COVID-19 virus; and

WHEREAS, in response to the Coronavirus Disease 2019 ("COVID-19"), Governor Ron DeSantis issued Executive Order No. 20-51 on March 1, 2020, declaring a public

health emergency in the State of Florida, and said emergency has been extended by subsequent emergency orders and remains in effect; and

WHEREAS, after Governor DeSantis issued Executive Order No. 20-91 on April 1, 2020, imposing statewide restrictions on non-essential businesses and activities due to COVID-19 (Safer at Home Order), Governor DeSantis subsequently issued a series of executive orders removing, decreasing and in some cases reinstating or adjusting, the restrictions of the Safer at Home Order in order to provide for the phased re-opening of the State of Florida; and

WHEREAS, the continued operation of businesses providing goods and services is necessary to provide essential goods and services to the public and visitors and to support the local economy; and

WHEREAS, the re-opening of the State of Florida will lead to more contact between individuals gathered together in public places, which is likely to increase the transmission of COVID-19 among individuals and the spread of COVID-19 within Florida communities; and

WHEREAS, COVID-19 is spread through airborne transmission from individuals, sneezing, speaking, and coughing; and

WHEREAS, COVID-19 can be spread by individuals who are asymptomatic, and the infectious droplet nuclei can spread for a great distance, although how far is not fully understood at present; and

WHEREAS, on June 20, 2020, the Florida Department of Health issued a Public Health Advisory recommending that residents wear a face covering, which helps the resident protects others from exposure as well as themselves; and

WHEREAS, the Centers for Disease Control and Prevention ("CDC") recommends use of facial coverings to reduce the spread of COVID-19; and

WHEREAS, a recent meta-analysis funded by the World Health Organization supports the use of social distancing and facial coverings to minimize transmission of COVID-19, and on June 5, 2020, the World Health Organization changed its position on the use of facial covering, and now supports their use; and

WHEREAS, according to public data provided by the Florida Department of Health, there has been a significant increase in coronavirus cases across the State of Florida and within Brevard County despite mitigation efforts; and

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WHEREAS, based on the manner in which the coronavirus is spread, and correlation of infection rates with the presence (or absence) of social distancing measures, the COVID-19 situation is fluid and therefore, it is prudent to be concerned that COVID-19 cases will significantly increase within the City of Cocoa if additional measures are not taken to stop or slow the spread of the virus; and

WHEREAS, COVID-19 continues to pose an imminent health hazard and an increased risk of infection to residents of the City and healthcare, first responders, and emergency medical service workers caring for patients with COVID-19; and

WHEREAS, the City's police powers and Comprehensive Emergency Management Plan authorize the City Council to take actions during declared emergencies to ensure the health, safety, and welfare of the community, and in this particular case, requiring face coverings when necessary to mitigate against the spread of COVID-19; and

WHEREAS, this Ordinance is issued to protect the health and safety of the citizens, residents and visitors of the City of Cocoa, to assist the healthcare delivery system in its ability to serve those persons infected by COVID-19, and to preserve the public's access to essential services and maintaining the operation of critical infrastructure; and

WHEREAS, it is also necessary to protect the economy and businesses and their customers by taking actions such as requiring face coverings to protect the health and safety of the citizens, residents and visitors of the City of Cocoa; and

WHEREAS, this Ordinance is also issued in support of the implementation of Florida's Safe.Smart.Step-by-Step Plan for Florida's Recovery and Florida's economic recovery from COVID-19; and

WHEREAS, the City Council finds the inconvenience of requiring the use of face coverings with enumerated exceptions is minimal compared to the negative risk of health, safety and welfare of the community associated with the spread of COVID-19 were no such requirement imposed; and

WHEREAS, it has long been recognized that when there is an emergency, the police power gives governmental authorities, such as the City of Cocoa, power to act for the public health and welfare that they might not otherwise have. *See, e.g., Dodero v. Wlaton County*, Case No. 3:20-cv05358-RV/HTC (N.D. Fla. April 7, 2020)(Rejecting injunction request related to beach closure on private property and stating "We are in the midst of a national health emergency [COVID-19], and it seems highly likely at this state

of the case that the county has the authority to take the measure that it has in order to address the emergency.”); *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11 (1905)(a community has the right to protect itself against an epidemic of disease which threatens the safety of its members); and

WHEREAS, in support of the legal sufficiency of enacting this Ordinance, the City Council also takes legislative notice of, and relies upon the findings and legal rationale contained in *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11 (1905)(upholding a compulsory vaccination law which was enacted during a growing smallpox epidemic in 1905), and several Florida cases upholding face covering requirements to combat the COVID-19 pandemic which have been adopted by several other local governments. See *Green v. Alachua Cty.*, No. 0102020-CA-001249 (Fla. 8th Cir. Ct. May 26, 2020); *Ham v. Alachua Cty. Bd. Of Comm’s*, No. 1:20-cv-00111-MW/GRJ (N.D.Fla. May 30, 2020); *Powers v. Leon Cty.*, No. 2020-CA-001200 (Fla. 2d Cir. Ct. July 10, 2020); *Machovec v. Palm Beach County*, No. 2020CA006920AXX (Fla. 15th Cir. Ct. July 27, 2020); and

WHEREAS, enacting the requirements set forth herein by ordinance rather than under local emergency powers, as enumerated in Chapter 252, Florida Statutes, allows the City to enforce such requirements by civil code enforcement and fines instead of criminal prosecution as a second degree misdemeanor; and

WHEREAS, the City Council finds that an emergency exists and the immediate enactment of this Emergency Ordinance is necessary pursuant to Section 166.041(3)(b), Florida Statutes; and

WHEREAS, the City Council also finds that this Emergency Ordinance is necessary for the preservation of the public health, safety and welfare of the citizens and visitors of Cocoa.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF COCOA, BREVARD COUNTY, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The foregoing recitals are hereby adopted by the City Council as material legislative findings of the City of Cocoa and are further fully incorporated herein by this reference as part of this Ordinance.

Section 2. Definitions. The following words used in this Resolution shall have the meaning ascribed below:

"Business Establishment" means a location with a roof overhead where business is conducted, goods are made or stored or processed or where services rendered. The term includes transportation network companies, such as Ubers and Lyft, vehicles operated for mass transit, jitneys, limousines for hire, rental cars, and other passenger vehicles for hire. The term also includes locations where non-profit, governmental, and institutional entities that facilitate public interactions and conduct business. Places of worship and other organized places of public assembly are also included in this term.

"Companion" means a person who is accompanying another person.

"Face Covering" shall mean a uniform piece of material, such as cotton, linen, polyester, that securely covers a person's nose and mouth and remains affixed in place without the use of one's hands, whether store bought or homemade, consistent with CDC guidelines. See <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-to-make-cloth-face-covering.html>.

"Lodging Establishment" shall have the same meaning as the term "transient public lodging establishment" set forth in Section 509.013(4)(a)1, Florida Statutes.

"Place open to the Public" shall mean a place to which the public has access, including, but not limited to, business establishments, public streets, public parks, common areas of buildings and properties, and such other places where the public is free to go. A person's home or residence or private office/commercial space is not a place open to the public.

"School" shall mean a public or private school, including the State University System, State College System, Brevard County School System, schools administered by the State Department of Education, charter schools and other private secondary and primary school institutions.

"Social Distancing" shall mean the practice of a person physically distancing themselves from another person by staying at least six (6) feet apart. Social distancing shall exclude requiring distancing between family members and Companions.

Section 3. Face Covering Required.

Except in situations when one or more of the exceptions list in Section 4 apply, a person shall wear a Face Covering consistent with the current CDC guidelines while within or at a place open to the public within the jurisdictional limits of the City of Cocoa.

Section 4. **Exceptions.** A Face Covering shall not be required for the following persons:

(a) Persons under the age of 2 years are not required to wear a mask under any circumstances. If a person is under the age of 6 years, use of a face covering shall be left to the discretion of that person's parent, guardian or accompanying adult.

(b) Persons observing and maintaining social distancing from other persons in accordance with CDC guidelines at outdoor locations.

(c) Persons within a motor vehicle, except if the motor vehicle is being used as a vehicle-for-hire then the vehicle constitutes a business establishment.

(d) Persons for whom a face covering would cause impairment due to an existing documented or demonstrable health condition or disability. It is the intent of this provision that persons unable to tolerate a face covering for medical, sensory or any other health condition which makes it difficult to utilize a face covering and function in public are not required to wear a face covering. Additionally, it is further intent of this provision that persons having trouble breathing, unconscious, incapacitated or otherwise unable to remove the face covering without assistance are not required to wear a face covering.

(e) Persons working in a business establishment who are in an area not open to the public or who are not interacting face-to-face with the public. However, this exception does not apply to employees of the business establishment who are present in the kitchen or other food and beverage preparation area of a business establishment.

(f) Persons working in, or patrons of, a business establishment where use of a face covering would prevent them from performing the duties or receiving the services of the business establishment.

(g) Persons exercising, while maintaining social distancing.

(h) Persons eating or drinking.

(i) Public safety, fire, and other life safety and health care personnel utilizing their personal protective equipment required by their respective agencies.

(j) A person speaking with another individual who is hearing impaired where the hearing impaired individual needs to observe the person's mouth in order to understand what is spoken.

(k) Persons for whom a face covering would conflict with the American with Disabilities Act (ADA).

(l) Students and persons at any location under the control of the school shall be governed by the school's policy regarding face coverings when such students and persons are on school campus.

(m) Persons in a lodging establishment who is inside of the lodging unit including, but not limited to, a hotel room, motel room, bed & breakfast room, vacation rental unit, timeshare unit or similar lodging unit.

Section 5. Business Establishments – Posting Notice. Every business establishment that has a place open to the public shall post signage at the establishment's entrance in a conspicuous place notifying all persons of the requirement to wear a face covering as required by this Ordinance. Owners of business establishments that have a place open to the public shall notify its customers and employees of the requirements of this Ordinance.

Section 6. Compliance and Enforcement. This Ordinance is intended as an emergency measure in furtherance of the City's police powers under home rule, and violations of this Ordinance are a noncriminal infraction. This Ordinance does not authorize the search or arrest of an individual. This Ordinance shall be subject to civil code enforcement only. This Ordinance shall not be considered an emergency measure under the Section 252-47 and 252.50, Florida Statutes, and violators shall not be subject to criminal prosecution. The City seeks voluntary compliance with the provisions contained in this Ordinance and to educate and warn of the dangers of non-compliance. However, in the event compliance is not achieved voluntarily, then as a last resort, this Ordinance shall have the full force and effect of law of the City of Cocoa, and violations shall be a non-criminal civil infraction, enforceable as follows:

(a) Prior to issuance of a code enforcement citation, the person will be asked to comply with this Ordinance or be able to explain how an exception in Section 4 applies to them.

(b) After the inquiry set forth in (a), a code enforcement citation may be issued for a violation of this Ordinance, and a civil penalty imposed against the violator as follows:

(1) For the first two (2) violations, a no penalty civil citation shall be issued against the violator.

(2) For the third and subsequent violations against the violator, a civil citation shall be issued with a penalty of fifty dollars (\$50.00) for each violation. In lieu of paying the civil penalty, the violator may provide one (1) hour of community service to address needs within the City of Cocoa. The community service shall be determined by the City Manager and be required to benefit the community service needs of the City in some tangible way.

(c) The City reserves all other remedies available at law or equity to require compliance with this Ordinance including, but not limited to, injunctive relief, trespass and closure of public areas within the City's control.

Section 7. Repeal of Prior Inconsistent Ordinances and Resolutions. All prior inconsistent ordinances and resolutions adopted by the City Council, or parts of prior ordinances and resolutions in conflict herewith, are hereby repealed to the extent of the conflict. Resolution No. 2020-172 which urged the public to wear face coverings is hereby superseded and expressly repealed by this Ordinance.

Section 8. Non-Codification of Ordinance. Because of the temporary emergency nature of this Ordinance, this Ordinance shall not be codified in the City Code.

Section 9. Severability; Conflicts; Applicability.

(a) If any section, subsection, sentence, clause, phrase, word or provision of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, whether for substantive, procedural, or any other reason, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this Ordinance.

(b) Any provision within this Ordinance that conflicts with any State or Federal law or constitutional provision, or conflicts with or are superseded by a current or subsequently issued Executive Order of the Governor, the President of United States, or Brevard County shall be deemed inapplicable and deemed to be severed from this Ordinance, with the remainder of this Ordinance remaining intact and in full force and effect.

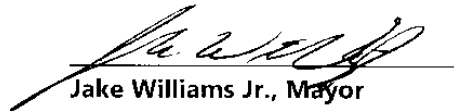
(c) This Ordinance has no application outside of the municipal boundaries of the City of Cocoa.

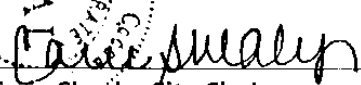
(d) Nothing contained herein shall require or allow a person to wear a Face Covering so as to conceal the identity of the wearer in violation of Chapter 876, Florida Statutes.

Section 10. Report to City Council; Sunset Ordinance. The City Council will periodically review this Ordinance approximately every thirty (30) days following the effective date of this Ordinance to determine whether this Ordinance should be terminated depending on the status of the COVID-19 emergency. The City Manager shall schedule the review on a regular or special meeting agenda. During this periodic review process, the City Council reserves the right to terminate this Ordinance by majority vote at any time, without notice.

Section 11. Effective Date. This Ordinance shall become effective at 12:01 a.m. on Saturday, August 15, 2020, and shall remain in effect until repealed by the City Council.

ADOPTED by the City Council of the City of Cocoa, Florida, in accordance with Section 166.041(3)(b), Florida Statutes by an affirmative vote of 2/3 of the City Council, in a regular meeting assembled on the 12th day of August, 2020.


Jake Williams Jr., Mayor



Carrie Shealy, City Clerk