




City of Ocala

OFFICE OF THE MAYOR

Date: August 10, 2020
To: Jay A. Musleh, City Council President
From: Reuben Kent Guinn, Mayor 
Re: Veto of Ordinance # 2020-47

Pursuant to Sections 2.13, 2.14 and 3.03 of the City of Ocala Charter, I am vetoing Ordinance # 2020-47 Requiring Face Coverings for Indoor Locations in order to Control the Spread of Covid-19; Providing for Penalties and Enforcement; Providing for Applicability and Conflict; and Providing for an Effective Date, for the following reasons:

1. It violates the First Amendment Freedom of Religion. The government cannot have you declare your religious beliefs in order to exercise your freedom of religion and as a means to being free of not wearing a government mandated mask.
2. The government cannot declare a church a business.
3. A person does not need to document or demonstrate a medical problem to be exempt from wearing a mask.
4. The burden of the violation is unfairly placed on the owner, not the person not wearing the mask.
5. Government cannot mandate a medical device to be worn.

If you have any questions, please contact me at 352-572-0312 or kguinn@ocalafl.org

c: Patrick G. Gilligan, City Attorney
Robert W. Batsel, Jr., Assistant City Attorney
Justin Grabelle, President Pro Tem
Brent R. Malever, City Council
Matthew Wardell, City Council
Ire J. Bethea, City Council

ORDINANCE NO. 2020-47

AN EMERGENCY ORDINANCE OF THE CITY OF OCALA, FLORIDA, REQUIRING FACE COVERINGS FOR INDOOR LOCATIONS IN ORDER TO CONTROL THE SPREAD OF COVID-19; PROVIDING FOR PENALTIES AND ENFORCEMENT; PROVIDING FOR APPLICABILITY AND CONFLICT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS:

- A. Pursuant to §166.041(3)(b), Florida Statutes, and Section 2.14 of the City Charter, the City Council (“Council”) of the City of Ocala, Florida (“City”) is granted the authority to adopt emergency ordinances to promote life, health, property or public peace.
- B. On March 30, 2020, Council declared a State of Local Emergency resulting from the outbreak of the Coronavirus Disease 2019 (COVID-19).
- C. Council shares the desire to protect the public health, welfare, and safety due to the threat of COVID-19 through measures such as those set forth in Executive Orders and guidance issued by the Governor of the State of Florida and President of the United States in a manner that does not place an excessive burden on individuals, commercial establishments and small businesses operating within the City.
- D. COVID-19 is spread through airborne transmission from individuals sneezing, speaking, and coughing, from which infectious droplet nuclei can spread for a great distance.
- E. The use of face coverings has been identified as one of the primary means to prevent individuals who may be infected with COVID-19 from spreading it to other individuals.
- F. To reduce the spread of disease, the Centers for Disease Control (“CDC”) recommends the use of cloth face coverings in public settings where other social distancing measures are difficult to maintain since many individuals with no symptoms can spread the virus, and even individuals who develop symptoms can transmit the virus to others before showing symptoms.
- G. On June 22, 2020, pursuant to Section 381.00315(1), Florida Statutes, the State Surgeon General/State Health Officer issued a public health advisory which advised all persons in Florida, with certain enumerated exceptions, wear face coverings in any setting where social distancing is not possible.
- H. On June 30, 2020, Coronavirus Task Force member Dr. Anthony Fauci provided testimony to Congress regarding the surge in COVID-19 cases and, along with the director of the CDC, urged all citizens to wear face coverings to slow the spread of COVID-19.
- I. The re-opening of the State in general, and the City of Ocala in particular, while necessary for economic and social well-being of the residents and community as a whole, has led to more contact between individuals and a marked increase in the community spread of COVID-19.
- J. Despite mitigation efforts, the number of confirmed cases of COVID-19 has been spiking both in Florida and in Marion County, and although there is increased testing, the positivity rate has also been trending higher, indicating increased spread and transmission of the disease.

- K. Federal and State health officials have indicated that they expect additional cases of COVID-19 to be identified in the coming days and based on the highly contagious nature of COVID-19, additional transmission is likely.
- L. Cloth face coverings are relatively inexpensive and readily available as the CDC states that they can be made from household items and provides online guidance for making “do-it-yourself” coverings for people who cannot or do not want to buy one or otherwise cannot obtain a free face covering.
- M. Free face coverings are available to the public at various locations in the City of Ocala and throughout Marion County.
- N. Adopting face covering requirements via ordinance, as opposed to local emergency powers, permits enforcement through civil citations and fines instead of criminal prosecution as a second-degree misdemeanor.
- O. The City Council has determined that an emergency exists, and the immediate enactment of this Emergency Ordinance is necessary in order to mitigate the continued spread of COVID-19.
- P. The upcoming Council meetings on August 18, 2020 and on September 1, 2020 do not provide adequate time to adopt this Ordinance under the ordinary adoption process.
- Q. The City Council does hereby waive notice of intent to consider this Ordinance.

NOW THEREFORE BE IT ORDAINED by the City Council of the City of Ocala, Florida as follows:

Section 1. *Legislative Findings and Intent.* The above stated recitals to this Ordinance are hereby incorporated into this Ordinance and serve as the legislative intent supporting this Ordinance.

Section 2. *Emergency Enactment.* Pursuant to State law and based on the legislative findings set forth herein, it is declared that an emergency exists requiring immediate action by the Council.

Section 3. *Definitions.*

- (i) **Face Covering.** A “face covering” is a material that covers the nose and mouth and that fits snugly against the sides of the face so there are no gaps. It can be secured to the head with ties or straps or simply wrapped around the lower face. It can be made of a variety of materials, such as cotton, silk or linen. Coverings with materials made of multiple layers is highly encouraged. A cloth face covering may be factory-made or sewn by hand, or the cloth face covering can be improvised from household items. The CDC has posted additional information regarding how to make, wear, and wash a cloth face covering at <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/about-face-coverings.htm>.1.
- (ii) **Business Establishment.** A “business establishment” means a location with a roof overhead under which any business is conducted, goods are made or stored or processed or where services are rendered. The term “business establishment” includes places of worship and locations where governmental entities conduct business (governmental entities having their own protocols regarding face coverings). A “business establishment” includes a “lodging establishment.”

- (iii) Lodging Establishment. A “lodging establishment” shall have the same meaning as the term “transient public lodging establishment” has in Section 509.013(4)(a)1, Florida Statutes (2019). Accordingly, for purposes of this Emergency Ordinance, a “lodging establishment” means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.

Section 4. *Mandatory Requirements.*

- (i) The Proprietor of a business establishment or lodging establishment shall ensure that every person in such business establishment or lodging establishment wears a face covering.
- (ii) Notwithstanding the foregoing, the following persons shall be exempt from the requirement to wear a face covering set forth in section (i):
- a. Children under the age of seven (7) years of age.
 - b. Persons who have trouble breathing due to a chronic pre-existing condition or individuals with a documented or demonstrable medical problem. It is the intent of this provision that those individuals who cannot tolerate a facial covering for a medical, sensory or any other condition which makes it difficult for them to utilize a face covering and function in public are not required to wear one.
 - c. Public safety, fire, and other life safety and health care personnel, as their personal protective equipment requirements will be governed by their respective agencies.
 - d. Persons exercising religious beliefs or practices conflicting with the wearing of a facial covering.
 - e. Persons physically exercising while observing at least 6 feet of distancing from another person.
 - f. Restaurant, bar or theatre patrons while eating or drinking. It is the intent of this provision that a face covering will be worn while traversing a business establishment for ingress and egress, to use the restroom facilities, and while otherwise standing when persons are unable to maintain at least 6 feet of distancing.
 - g. Business owners, managers and employees who are in an area of a business establishment that is not open to customers, patrons or the public, provided that 6 feet of distance exists between the persons. This exception does not apply to employees who are present in the kitchen or other food and beverage preparation area of a business establishment.
 - h. Medical, dental or other health care facilities or offices, as mask wearing in those facilities will be regulated pursuant to guidance specifically directed to those particular facilities.

- i. Persons who are separated from any other person by means of barriers such as plastic face shields, plastic or glass barriers, or other devices that effectively prevent the transmission of the COVID-19 virus.
 - j. A person in a lodging establishment who is inside the lodging unit, including but not limited to, a hotel room, motel room, vacation rental unit, timeshare unit, or similar unit.
- (iii) The Proprietor of a business establishment is required to post signage notifying all persons of the requirement to wear a face covering set forth herein on the entry door or front façade of such business establishment.
 - (iv) Nothing herein shall require or allow a person to wear a face covering to conceal the identity of the wearer in violation of Chapter 876, Florida Statutes.

Section 5. Penalties and Enforcement.

- (i) It is the intent of the City to seek voluntary compliance with the provisions contained herein and to educate and warn of the dangers of non-compliance. A Proprietor of a business establishment shall be deemed to be in compliance with the requirements of this Ordinance if such Proprietor or its employee(s) implements all of the following measures:
 - a. Posts signage about the face covering requirement;
 - b. Announces the requirement over the business establishment or lodging establishment’s public address system, if possible;
 - c. Requires employees to wear face coverings, unless they are excepted from such requirement under subsection (4)(ii) of this Emergency Ordinance; and
 - d. Makes a “reasonable effort” to ensure guests, customers, or patrons within the business establishment wear a face covering. “Reasonable effort” shall include verbally requesting that a guest, customer or patron wear a face covering.
- (ii) Prior to the issuance of penalties as provided in subsection 5(iv) of this Emergency Ordinance, the alleged violator shall be given an opportunity to voluntarily comply with the provisions of this Emergency Ordinance. In the event voluntary compliance is not achieved, then violation of this Emergency Ordinance, and any order issued pursuant hereto, shall be subject to the penalties as provided in subsection 5(iv) of this Emergency Ordinance, or as otherwise provided by law.
- (iii) A violation of this Emergency Ordinance is a noncriminal infraction. A violation of this Emergency Ordinance does not authorize the search or arrest of an individual.
- (iv) The Proprietor of a business establishment is subject to the following penalties for the violation of this Emergency Ordinance:
 - a. For a first offense, a verbal warning that includes education about the dangers of non-compliance;

- b. For a second offense, a written warning;
- c. For a third and all subsequent offenses, a fine of \$25.00.
- d. All other remedies available at law or equity, including injunction, remain available to the City, even after issuance of a citation.

Section 6. *Applicability and Conflict.* This Emergency Ordinance shall apply throughout the corporate limits of the City of Ocala. In the event that any provision in this Emergency Ordinance conflicts with or is superseded by a subsequently issued executive order of the Governor or of the President of the United States, such provision shall be deemed inapplicable and deemed to be severed from this Emergency Ordinance, with all remaining provisions of this Emergency Ordinance to remain in full force and effect.

Section 7. *Severability.* If any word, phrase, clause, section, or portion of this Emergency Ordinance is declared by any court of competent jurisdiction to be invalid, void, unconstitutional, or unenforceable, then all remaining provisions and portions of this Emergency Ordinance shall remain in full force and effect.

Section 8. *Effective Date; Term.* This Emergency Ordinance shall take effect upon approval by the Mayor, or upon becoming law without such approval, and shall remain in effect until the earlier of the date on which any of the following occurs:

- (i) The state of emergency related to COVID-19 declared by the Governor of Florida expires;
- (ii) The state of local emergency related to COVID-19 declared by the City of Ocala expires;
- (iii) The City Council specifically rescinds this Emergency Ordinance; or
- (iv) Upon its automatic repeal at t 12:01 a.m. on the sixty-first day following the date on which it was adopted, pursuant to Section 2.14 of the City Charter.

INTENTIONAL PAGE BREAK – SIGNATURE PAGE FOLLOWS

PASSED AND ADOPTED by the City Council of the City of Ocala, Florida, through emergency enactment procedures authorized by Section 166.041(3)(b), Florida Statutes, on this 4th day of August, 2020.

	YES	NO
Council President Jay Musleh	_____	<u> X </u>
Councilman Pro-Tem Justin Grabelle	<u> X </u>	_____
Councilman Matthew Wardell	<u> X </u>	_____
Councilman Brent Malever	<u> X </u>	_____
Councilman Ire Bethea	<u> X </u>	_____

ATTEST:

Angel B. Jacobs
Angel B. Jacobs
City Clerk

CITY OF OCALA

By: Jay Musleh
Jay A. Musleh
President, Ocala City Council

Approved/~~Denied~~ by me as Mayor of the City of Ocala, Florida, on 8/10, 2020.

By: Reuben Kent Guinn
Reuben Kent Guinn
Mayor

Approved as to form and legality:

Robert W. Batsel, Jr.
Robert W. Batsel, Jr.
Assistant City Attorney

Ordinance No: 2020-47
Adopted: 8/4/2020
Vetoed: 8/10/20