

CITY OF HOLMES BEACH

EMERGENCY ORDINANCE NO. 20-11

AN EMERGENCY ORDINANCE OF THE CITY OF HOLMES BEACH, FLORIDA, TO MANDATE THAT INDIVIDUALS WEAR A FACE COVERING IN PUBLIC IN CERTAIN CIRCUMSTANCES; PROVIDING FOR PENALTIES AND ENFORCEMENT THEREOF; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE AND SUNSET DATE.

WHEREAS, the Governor of the State of Florida issued Executive Order No. 20-51 on March 1, 2020, declaring a Public Health Emergency in the State of Florida, and Executive Order 20-52 on March 9, 2020, as extended by Executive Order No. 20-114 on May 8, 2020, declaring a State of Emergency for the entire State of Florida; and

WHEREAS, on March 17, 2020, Mayor Titsworth issued a proclamation declaring a state of emergency for the City of Holmes Beach due to the pandemic known as the coronavirus (COVID-19), which proclamation was codified by Resolution No. 20-08, and which local state of emergency has been extended for consecutive seven-day periods by subsequent proclamations and remains in effect at this time; and

WHEREAS, the City Commission of the City of Holmes Beach, Florida (“Commission”) finds that COVID19 presents a danger to the health, safety, and welfare of the public; and

WHEREAS, the Centers for Disease Control (“CDC”) advises that COVID19 spreads mainly from person to person through respiratory droplets produced when an infected person coughs, sneezes, or talks; these droplets can land in the mouths or noses of people in close proximity of possibly be inhaled into the lungs; and studies and evidence on infection control report that these droplets usually travel around 6 feet; and

WHEREAS, the CDC advises that a significant portion of individuals with COVID19 lack symptoms (“asymptomatic”) and that even those who eventually develop symptoms (“pre-symptomatic”) can transmit the virus to others before showing symptoms. This means that the virus can spread between people interacting in close proximity---for example, speaking, coughing, laughing, or sneezing---even if those people are not exhibiting symptoms; and

WHEREAS, the CDC recommends wearing cloth face coverings in public settings where other social distancing measures are difficult to maintain in order to slow the spread of the virus and help people who may have the virus and do not know it from transmitting it to others; and

WHEREAS, the CDC does not recommend wearing a cloth face covering for children under the age of 2, or anyone who has trouble breathing, or is unconscious, incapacitated or otherwise unable to remove the mask without assistance; and

WHEREAS, the CDC recommends only simple cloth face coverings for the general population and not surgical masks or N-95 respirators because these are critical supplies that must continue to be reserved for healthcare workers and other medical first responders; and

WHEREAS, cloth face coverings are relatively inexpensive and readily available as the CDC states they can be made from household items and provided online guidance for making do-it-yourself coverings for people that cannot or do not want to buy one from the increasing sources producing and selling coverings; and

WHEREAS, the Commission finds it is in the best interest of the public health, safety and welfare of the residents and workers of and visitors to the City of Holmes Beach to require suitable face coverings in public locations to slow the spread of COVID19; and

WHEREAS, the Commission finds the potential inconvenience of an ordinance requiring the use of face coverings or other suitable face coverings is minimal compared to the risk to the health, safety, and welfare of the community were no such rule imposed; and

WHEREAS, it appears that most people are aware of social distancing and CDC recommendations to slow the spread of COVID19, but such recommendations are not being voluntarily practiced on a community wide basis; and

WHEREAS, the Commission finds implementation of this ordinance is necessary for the preservation of the health, safety, and welfare of the community; and

WHEREAS, the State of Florida has not preempted local governments from regulating in the field of minimum health requirements with respect to COVID19; and

WHEREAS, 28 C.F.R. 36.208, the implementing regulations for the Americans with Disabilities Act ("ADA"), states that the ADA does not require a public accommodation to permit an individual to participate in or benefit from the goods, services, facilities, privileges, advantages and accommodations of that public accommodation when that individual poses a direct threat to the health or safety of others; and customers with disabilities who may be unable, due to their disability, to wear a face mask may access the goods and services of the businesses through the provisions of curbside service or home delivery; and

WHEREAS, pursuant to the City of Holmes Beach Code of Ordinances, an Emergency Ordinance may be adopted with or without amendment or rejected at the meeting at which it is introduced, but the affirmative vote of at least four members of all the commission shall be required for adoption, and if adopted, the ordinance shall be published and printed as prescribed for other adopted ordinances.

NOW THEREFORE, be it ordained by the City Commission of the City of Holmes Beach, Florida, as follows:

SECTION 1. Findings. The above recitals are adopted by the Commission as legislative findings.

SECTION 2. Emergency Existence. Pursuant to the findings of Section 1, there is a current emergency in the City of Holmes Beach, Florida pertaining to COVID19. The City of Holmes Beach, Florida must ensure that it preserves the health, safety, and welfare of the residents, workers, and visitors to the City of Holmes Beach from COVID19, and finds it in the best interest of the public health, safety and welfare of the community to require suitable face coverings in public locations to slow the spread of COVID19.

SECTION 3. Definitions. For purposes of this ordinance, the following terms are defined as follows:

- (1) Face Covering. A “face covering” is a material that covers the nose and mouth. 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. A cloth face covering may be factory-made or sewn by hand, or can be improvised from household items.
- (2) 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” also includes locations where non-profit, governmental, and quasi-governmental entities facilitate public interactions and conduct business. The term does not include schools servicing students under the age of 18.
- (3) Lodging Establishment. A “lodging establishment” shall have the same meaning as the term “transient public lodging establishment” has in F.S. 509.013 (4)(a)(1) (2019). A lodging establishment is a specific type of business establishment.

SECTION 4. Recommended Standards of Conduct.

- (1) Every person over the age of six (6) who is away from his or her residence should wear a face covering when closer than 6 feet to another person with whom he or she does not reside.
- (2) Every person over the age of six (6) who is away from his or her residence should carry a face covering capable of immediate use.
- (3) Each owner or manager should establish rules for that business establishment that encourage social distancing, hand washing, and other protective measures for customers and employees based upon guidelines provided by the CDC and the State Department of Health.
- (4) Vulnerable Populations. Individuals older than 65 years of age and individuals with a serious underlying medical condition (such as, but not limited to, chronic lung disease, moderate-to-severe asthma, serious heart conditions, immune-compromised status, cancer, diabetes, severe obesity, renal failure, and/or liver disease) should continue to stay at home. When leaving home, these individuals should follow social distancing and other general mitigation guidance. Those living with vulnerable individuals should be aware of the exposure risk that they could carry the virus back home after returning to work or other environments where distancing is not practiced. Vulnerable populations should affirmatively inform their employer that they are a member of a vulnerable population so that their employer can plan accordingly.

SECTION 5. Mandatory Requirements.

- (1) An owner, manager, employee, customer or patron of a business establishment must wear a face covering while in that business establishment. Business establishment owners, managers, and/or employees shall be required to ensure compliance with this

Ordinance by (a) denying admittance to any person who fails to comply with the requirements of this Ordinance, and (b) requiring or compelling the removal of any persons who fail to adhere to the requirements of this Ordinance.

(2) The requirements of this section do not apply to:

- a. Restaurant customers or patrons while dining and/or consuming beverages while seated at a table;
- b. A gym patron engages in a workout or class where at least 6 feet of distancing exists with the next closest person;
- c. Barbershop or beauty salon customers or patrons when wearing a face covering would reasonably interfere with receiving services;
- d. 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 employees. This exception does not apply to employees who are present in the kitchen or other food and beverage preparation area of a restaurant or food establishment. When an owner, manager, or employee is in their place of employment but not within six feet of another person, that owner, manager, or employee does not need to wear a mask.
- e. Bar patrons while consuming beverages and/or food.
- f. A lodging establishment guest when inside of the lodging unit including but not limited to a hotel room, motel room, vacation rental unit, timeshare unit, or similar unit.
- g. Nothing herein shall require or allow a person to wear a face covering so as to conceal the identity of the wearer in violation of Florida Statute Chapter 876.

(3) The owner, operator, manager, and employee of a business or lodging establishment shall ensure that every individual in that establishment complies with this section.

(4) When a customer of a business establishment asserts that he or she has a disability that prevents the individual from wearing a mask, the owner, manager, or employee of the business may exclude the individual, even if they have a disability, as they pose a direct threat to the health and safety of employees and other customers, even if asymptomatic, and shall accommodate the disabled individual in a manner that does not fundamentally alter the operations of the business establishment nor jeopardize the health of the business's employees and other customers, such as providing curb service or delivery or other reasonable accommodation.

SECTION 6. Penalties and Enforcement. This ordinance may be enforced in the following manner:

(1) Civil Citation.

- a. A code compliance or law enforcement officer may, upon observation of a violation by a person who does not immediately put on a face covering after

receiving a warning, issue a notice of violation or civil citation that assesses a fine as provided in subsection b.

b. Any person or business establishment prosecuted under this subsection and found in violation of this ordinance may be punished by a fine of \$250.00 for the first offense, and \$500.00 for each subsequent offense.

(2) Administrative Notice of Violation.

a. A code compliance or law enforcement officer may, upon observation of a violation by a person who does not immediately put on a face covering after receiving a warning, issue a notice of violation that assesses a fine as provided in subsection b.

b. Any person or business establishment found in violation of this ordinance may be fined pursuant to part I of Chapter 162, Florida Statutes.

(3) Injunctive Relief.

a. The City Attorney may file an action for injunctive relief in Circuit Court seeking to enjoin violations that occur within that municipality.

(4) Private Right of Action. Any natural person may seek injunctive relief in the Circuit Court for the 12th Judicial Circuit to enforce violations of this section against a violator. Attorney's fees and costs incurred in an action to enforce this ordinance may be awarded to the substantially prevailing party at the discretion of the court.

(5) Defenses. An owner, manager, and/or employee of a business establishment shall not be liable in any enforcement action taken under this section for the violations of a guest, customer, and/or patron if that owner, manager, and/or employee directed that guest, customer, and/or patron who refuses to wear a face covering to vacate the premises or face prosecution of trespass.

SECTION 7. Severability. If any section, subsection, sentence, clause, or provisions of this ordinance is held by a court of competent jurisdiction to be invalid, the remainder of this ordinance shall not be affected by such invalidity.

SECTION 8. Effective Date. This Ordinance shall be effective upon adoption by the Commission and approval by the Mayor in accordance with the Charter of the City of Holmes Beach, and enforcement of the Ordinance shall be authorized beginning on June 28, 2020, at 5:00 p.m.

SECTION 9. Sunset Date. Pursuant to the City of Holmes Beach, Florida Code of Ordinances, this Emergency Ordinance shall stand repealed as of the sixty-first day following the date on which it was adopted unless reenactment of the ordinance under regular procedures or reenactment under emergency ordinance if the emergency still exists.

PASSED AND ADOPTED, by the City Commission of the City of Holmes Beach, Florida, this 25th day of June, 2020.

APPROVED ON SINGLE READING AS PROVIDED BY SECTION 3.10 OF THE CITY CHARTER ON JUNE 25, 2020.

PUBLISHED AND PRINTED DATE: June 28, 2020.

COVID-19 Teleconference notes were as follows:

Meeting Date: June 25, 2020

Jim Kihm

Patrick Morton

Carol Soustek

Terry Schaefer

Kim Rash

APPROVED BY ME THIS 25th DAY OF JUNE, 2020.

Judy Titsworth, Mayor

ATTEST:

Stacey Johnston, MMC, City Clerk