

AN EMERGENCY ORDINANCE REQUIRING INDIVIDUALS TO WEAR FACE COVERINGS IN FOOD AND OTHER RETAIL AND COMMERCIAL ESTABLISHMENTS WHICH ARE OPEN TO THE PUBLIC, AND MATTERS RELATED THERETO.

**WHEREAS**, the 2019 Novel Coronavirus (“COVID-19”) is a respiratory disease that can result in serious illness or death by the SARS-CoV-2 virus, which is a new strain of coronavirus previously unidentified in humans and which can spread from person to person;

**WHEREAS**, the Centers for Disease Control and Prevention (the “CDC”) has warned of the high public health threat posed by COVID-19 globally and in the United States;

**WHEREAS**, on January 31, 2020, the United States Department of Health and Human Services Secretary declared a public health emergency in the United States for COVID-19 under Section 391 of the Public Health Service Act;

**WHEREAS**, on March 13, 2020, the President of the United States declared that the COVID-19 outbreak in the United States constitutes a national emergency, which began on March 1, 2020;

**WHEREAS**, also on March 13, 2020, the Governor of the State of South Carolina (the “State”) issued Executive Order 2020-08, declaring a State of Emergency based on a determination that the COVID-19 poses an actual or imminent public health emergency for the State;

**WHEREAS**, the Governor of the State has subsequently declared a continued State of Emergency in Executive Orders 2020-15 (March 28), 2020-23 (April 12), 2020-29 (April 27), 2020-35 (May 12), 2020-38 (May 27), and 2020-40 (June 11);

**WHEREAS**, the State is experiencing a dramatic increase in the number of identified new COVID-19 cases, and as of July 6, 2020, the South Carolina Department of Health and Environmental Control (“DHEC”) is reporting that there have been 46,247 confirmed COVID-19 cases and 819 confirmed COVID-19 deaths in the State;

**WHEREAS**, health authorities, including the CDC, the Surgeon General of the United States, and DHEC have recommended the use of face coverings as a means of preventing the spread of COVID-19; and

**WHEREAS**, S.C. Code § 5-7-250(d) provides that “[t]o meet public emergencies affecting life, health, safety or the property of the people, council may adopt emergency ordinances ... by the affirmative vote of at least two-thirds of the members of council present. An emergency ordinance is effective immediately upon its enactment without regard to any reading, public hearing, publication requirements, or public notice requirements. Emergency ordinances shall expire automatically as of the sixty-first day following the date of enactment;”

**WHEREAS**, the City Council of the City of Aiken has determined, based on the recommendations of public health experts and responsive to a serious threat to the public health, safety, and welfare of its citizens, that it would serve the public interest and be within the City’s police powers under Home Rule and S.C. Code § 5-7-60 to require that individuals wear face coverings in certain situations and locations;

**WHEREAS**, the South Carolina Attorney General, on June 25, 2020, issued a public statement that enacting local mask requirements is within the police power of municipalities and is not preempted by State law;

**WHEREAS**, this Ordinance has been approved by at least two-thirds of the Councilmembers present at the meeting in which it was considered;

**WHEREAS**, in order to protect, preserve, and promote the general health, safety and welfare and the peace and order of the community, the City of Aiken is taking steps to try to protect the citizens and employees of the City of Aiken from increased risk of exposure.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF AIKEN HEREBY ORDAINS THAT:**

**Section 1. Definitions**. As used herein, the terms below shall have the following meanings:

- 1) “Establishment” means a Foodservice Establishment or Retail Establishment.
- 2) “Face Covering” means a uniform piece of cloth, fabric, or other material that securely covers a person’s nose and mouth and remains affixed in place without the use of one’s hands. Face Coverings include, but are not limited to, bandanas, medical masks, cloth masks, scarves, and gaiters, provided that they are worn such that they securely cover the person’s nose and mouth.
- 3) “Foodservice Establishment” means any establishment within the City that sells prepared food on a dine-in, delivery, carry-out, or drive-through basis.
- 4) “Responsible Person,” with respect to an Establishment, means any individual associated with the Establishment who has the authority and ability to enforce the requirements of the Ordinance within the Establishment, such as an owner, manager, or supervisor. “Responsible Person” may also include an employee or

other designee that is present at the Establishment but does not have the title of manager or supervisor, but who has the temporary or designated authority and ability to ensure that the requirements of this Ordinance are met while the Establishment is open to the public.

- 5) "Retail Establishment" means any retail business, organization, establishment, or facility open to the public within the City, including without limitation:
  - a) grocery stores, convenience stores, and any other establishment engaged in the retail sale of non-prepared food;
  - b) commercial stores engaged in the retail sale of goods or services to the public including without limitation sporting goods stores; furniture and home-furnishings stores; clothing, shoe, and clothing-accessory stores; jewelry, luggage, and leather goods stores; department stores; hardware and home-improvement stores; book, craft, and music stores; florists and flower stores; and all other stores that sell supplies for household consumption or use;
  - c) pharmacies and other stores that sell medications or medical supplies;
  - d) alcoholic beverage stores; and
  - e) laundromats.

**Section 2. Use of Face Coverings.** Effective as of 12:00 P.M. on July 17, 2020.

- 1) all customers are required to wear Face Coverings while inside the enclosed area of any Retail Establishment or Foodservice Establishment;
- 2) all Retail Establishments shall require staff to wear, and those staff shall wear, Face Coverings while working in areas open to the general public and areas in which interactions with other staff are likely in which social distancing of at least six feet cannot be observed; and
- 3) all Foodservice Establishments shall require staff who interact with customers (including, without limitation, delivery personnel) to wear, and those staff shall wear, Face Coverings while working.
- 4) businesses subject to this ordinance are required to post appropriate signage at each public entrance to the building informing anyone entering the building of these requirements, and the operator of the business shall ensure that all people entering the building are in compliance.
- 5) failure by customers to comply with this ordinance could result in a charge of misdemeanor trespassing as defined in South Carolina Code Section 16-11-520.

**Section 3. Exemptions.** Face Coverings shall not be required:

- 1) in outdoor or unenclosed areas appurtenant to Retail Establishments or Foodservice Establishments in which social distancing of at least six feet is possible and observed;
- 2) for people whose religious beliefs prevent them from wearing a Face Covering;
- 3) for those who cannot wear a Face Covering due to a medical or behavioral condition;

- 4) for children under the age of five years old;
- 5) for patrons of Foodservice Establishments while they are dining;
- 6) in private, individual offices;
- 7) when complying with directions of law enforcement officers;
- 8) in settings where it is not practical or feasible to wear a Face Covering, including when obtaining goods or services such as the receipt of: a. dental services, b. barbering services, c. beautician services; or while swimming;
- 9) while doing outdoor physical activity;
- 10) police officers, firefighters or other first responders when not practical or engaged in a public safety matter of an emergency nature, or persons engaged in the repair or maintenance of infrastructure;
- 11) while exclusively with members of a family or the same household, and no person other than such family or household is within the same enclosed area.

**Section 4. Suspension of Contrary Local Provisions.** During the Emergency Term (as defined below), any ordinance, resolution, policy, or bylaw of the City that conflicts with the provisions hereof shall be and is hereby suspended and superseded.

**Section 5. Expiration of Ordinance; Extension of Emergency Term.** As provided by S.C. Code § 5-7-250(d), this Ordinance shall expire automatically as of the sixty-first day following the date of enactment (the “Emergency Term”). Notwithstanding the foregoing, however, Council may extend the Emergency Term by emergency ordinance for one or more additional terms, each of no more than sixty days, provided that the total duration of the Emergency Term shall not exceed six months without enacting an ordinance in the ordinary course.

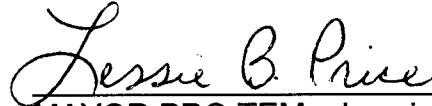
**Section 6. Severability.** Should any provision, section, paragraph, sentence, or word of this Ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences, or words of this Ordinance as hereby adopted shall remain in full force and effect.

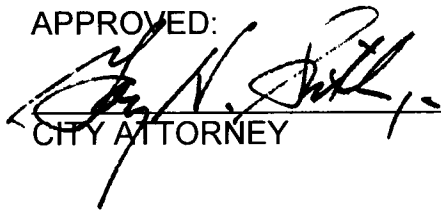
**Section 7. Effective Date and Time.** This emergency Ordinance shall take effect at 12:00 p.m. on Friday, July 17, 2020.

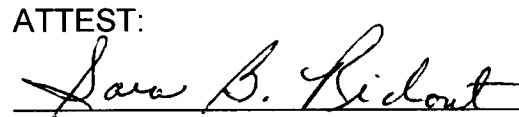
**Section 8. Communication.** During the period between passage by Council and the effective date, City staff including, but not limited to, Public Safety, Communications and Code Enforcement officials will communicate with businesses and the public in all necessary manner, including, but not limited to, personal visits, communication with local print and electronic media, social media and other electronic means in languages including English and Spanish.

ADOPTED by the Council of the City of Aiken by a two-thirds vote at regular meeting held this 13<sup>th</sup> day of July, 2020, at which a quorum was present and voting.

INTRODUCTION, FIRST READING AND ADOPTION: July 13, 2020

  
MAYOR PRO TEM – Lessie B. Price

APPROVED:  
  
CITY ATTORNEY

ATTEST:  
  
CITY CLERK