

ORDINANCE NO. 2020-30

AN ORDINANCE OF THE CITY OF VENICE, FLORIDA, REQUIRING FACE COVERINGS AS MORE FULLY SPECIFIED HEREIN; ALLOWING FOR EXCEPTIONS TO THE FACE COVERING REQUIREMENT; PROVIDING A PENALTY FOR VIOLATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR READING BY TITLE ONLY; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Novel Coronavirus Disease 2019 (COVID-19) is a severe acute respiratory illness that can spread among humans through respiratory transmission and causes symptoms similar to those of influenza and, in some cases, death; and,

WHEREAS, on March 13, 2020, President Donald J. Trump issued a Proclamation Declaring a National Emergency concerning COVID-19; and,

WHEREAS, on March 9, 2020 Ron DeSantis, Governor of the State of Florida, issued Executive Order No. 20-52 in which the Governor declared a State of Emergency exists in the State of Florida and on May 8, 2020 the Governor issued Executive Order No. 20-114 which extended the declaration of a State of Emergency for an additional period of sixty (60) days, which declaration remains in effect through July 7, 2020; and,

WHEREAS, between March 17, 2020 and the date hereof, the Governor issued several Executive Orders placing numerous restrictions on individuals and businesses in response to the state-wide threat of the spread of COVID-19; and,

WHEREAS, on March 16, 2020, the City Manager of the City of Venice enacted Executive Order No. 2020-01 that declared a Local State of Emergency due to COVID-19 which constitutes a potential life threatening situation for the citizens and visitors to the City for an undefined period of time, and which remains in effect;

WHEREAS, according to the U.S. Census Bureau, approximately 62% of the population of the City are individuals over the age of 65; and

WHEREAS, the City's population demographic is considered one of the populations most susceptible to severe illness and death from COVID-19; and

WHEREAS, COVID-19 constitutes a potential life-threatening situation for the citizens and visitors within the City and is expected to continue for some undefined period of time; and

WHEREAS, mitigating the effects of COVID-19 and protecting the health of its citizens and visitors is a high priority of the City; and,

WHEREAS, the Reopen Florida Task Force, in its Report to the Governor, noted that there is currently no vaccine to prevent contraction of COVID-19 and that all Floridians have a responsibility to continue practicing mitigation measures; and,

WHEREAS, on April 29, 2020, subsequent to his receipt of said Report, the Governor issued Executive Order 20-112 which is effective from May 4, 2020 until the Governor issues a subsequent order which terminates or modifies it; and,

WHEREAS, Executive Order 20-112 began Phase 1 of the safe, smart, step-by-step approach to reopen Florida while continuing the social distancing CDC guidance of limiting gatherings to no more than ten persons and distancing from other parties by six feet; and,

WHEREAS, on June 3, 2020 the Governor issued Executive Order 20-139 which also extended and further modified Executive Order 20-112 by commencing Phase 2 of the “Plan for Florida’s Recovery” as part of the safe, smart, step-by-step approach to reopen Florida; and,

WHEREAS, Executive Order 20-139 provides that all persons in Florida are encouraged to follow appropriate social distancing and safety protocols issued by the CDC and Occupational Safety and Health Administration (OSHA) and that senior citizens and individuals with a significant underlying medical condition are strongly encouraged to avoid crowds and that all persons in Florida are encouraged to avoid congregating in groups larger than 50 persons and that in store retail businesses should maintain appropriate social distancing and sanitation protocols; and,

WHEREAS, Executive Order 20-139, among other things, allows city council and board meetings to be conducted using virtual telecommunications media technology without the requirement of a physical quorum in any specified location; and,

WHEREAS, guidance released by the CDC on June 15, 2020, states (i) that the virus that causes COVID-19 is mostly spread by respiratory droplets released when people cough, sneeze, or talk and (ii) that a person can also get COVID-19 by touching a surface or object that has the virus on it and then touching their own nose, mouth, or possibly their eyes. This guidance goes on to state that “personal prevention practices such as staying home when sick, social distancing, wearing a cloth face covering, handwashing, and environmental prevention practices (such as cleaning and disinfection) are important ways to prevent the spread of COVID-19;” and,

WHEREAS, guidance released by the CDC dated June 15, 2020, indicates that the risk of contracting COVID-19 is increased by a variety of factors, including (i) interacting with more people; (ii) engaging with new people (e.g., those who don’t live with you); and (iii) being close to people who may be infected. According to this guidance “[i]t’s important that you and the people around you wear a cloth face covering when in public and particularly when it’s difficult to stay 6 feet away from others consistently;” and,

WHEREAS, the United States Centers for Disease Control and Prevention ("CDC") has expressly found that: "COVID-19 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 who are nearby or possibly be inhaled into the lungs. Studies and evidence on infection control report that these droplets usually travel around six feet (about two arms’ length)"; and,

WHEREAS, the CDC therefore specifically recommends that as businesses and communities reopen, and people resume their daily activities, people should wear face coverings to slow the spread of COVID-19, particularly "in public settings where other social distancing measures are difficult to maintain"; and,

WHEREAS, the CDC advises that a significant portion of individuals with coronavirus lack symptoms ("asymptomatic") and that even those who eventually develop symptoms ("presymptomatic") 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, 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 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 cloth face coverings for children under the age of two, or anyone who has trouble breathing, or is unconscious, incapacitated or otherwise unable to remove the mask without assistance; and

WHEREAS, cloth face coverings are relatively inexpensive and readily available as the CDC states they can be made from household items and provides 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, on June 20, 2020, the State of Florida's Surgeon General, Scott A. Rivkees, M.D., issued a Public Health Advisory recommending the wearing of face coverings in any setting where social distancing is not possible except under certain circumstances; and

WHEREAS, Sections 876.12 through 876.15, Florida Statutes, make it unlawful to wear a mask, however, pursuant to Section 876.155, Florida Statutes, this prohibition against mask wearing only applies when there is also evidence of an intent to intimidate other people, deprive them of equal protection under the law, or engage in criminal conduct; and,

WHEREAS, based on recent information and data from the Sarasota County Emergency Management, the number of confirmed cases of COVID-19 in Sarasota County has increased significantly since additional reopenings were authorized under Phase 2 of the Governor's Plan for Florida's Recovery; and,

WHEREAS, based on advice from medical professionals, the CDC, and the State of Florida's Surgeon General, the number of confirmed cases of COVID-19 will continue to increase if additional measures to stop or slow the spread of COVID-19 are not instituted; and,

WHEREAS, the City Council finds the 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, the City Council finds implementation of this Ordinance is necessary for the preservation of the health, safety, and welfare of the community; and

WHEREAS, the City Council resolves that it is in the best interests of the residents, workers and visitors of the City and it is in the furtherance of the public health, safety, welfare to formally adopt this Ordinance to require face coverings as more fully specified herein.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VENICE, FLORIDA, as follows:

SECTION 1. Ordinance No. 2020-24, entitled “Face Covering Requirements”, adopted by the City Council on August 25, 2020, is scheduled to expire at 11:59 p.m. on Thursday, September 24, 2020. It is the City Council’s intent to restate, amend, and extend the Face Covering Requirements within the City of Venice beyond the term provided for in Ordinance No. 2020-24 to ensure that there is continued, uninterrupted face coverage usage by the City’s residents, workers, service providers and visitors throughout the City of Venice during the ongoing COVID-19 pandemic to prevent the spread of the virus. Accordingly, the City Council adopts Ordinance No. 2020-30, entitled “Face Covering Requirements,” as more particularly set forth herein, to take effect immediately upon the expiration of Ordinance No. 2020-24. Ordinance No. 2020-30, entitled “Face Covering Requirements” is hereby created to provide as follows:

A. Definitions.

"Face Covering" shall mean a uniform piece of material 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, concurrent with CDC guidelines.

"Physical Distancing" or "Social Distancing" shall be synonymous terms meaning keeping space between oneself and other people by staying at least six feet (about two arms' length) apart.

B. Face Covering Required.

1. Every person living, working, visiting or doing business in the City of Venice shall wear a face covering in any indoor location, other than home or residence, subject to the exceptions in Section C below. For the purposes of this paragraph, if a home or residence is located within a multi-family condominium or apartment complex, the “home or residence” exception does not extend to the common areas of the condominium or apartments, including but not limited to lobbies, elevators, mailrooms and meeting rooms.

2. Every person living, working, visiting or doing business in the City of Venice shall wear a face covering in any public outdoor location, except when solely with or among members of their household, and subject to the exceptions in Section C below.
3. Medical and surgical face masks, such as "N95" masks or other similar medical or surgical masks, are in short supply and should be reserved for health care personnel and other first responders with the greatest need for such personal protective equipment.
4. All persons who own, manage, or are employed by any commercial business to which the public has or may obtain legally permissible access, whether publicly or privately owned, that is under a roof or is enclosed by two or more walls, doors or other means, shall post notice of the City's Face Covering requirements for the public and employees to wear in accordance with this Ordinance. Businesses shall advise employees and customers of the City's requirements.

C. Exceptions.

Nothing herein shall require the wearing of face coverings by the following persons or in the following locations:

1. Persons observing physical or social distancing; and
2. Persons eating or drinking; and
3. Persons inside of motor vehicles, except that persons inside of vehicles-for-hire shall be required to wear face coverings; and
4. Schools or daycare facilities, which may apply their own public safety policies and procedures; and
5. Governmental facilities, including but not limited to police and fire stations and administrative offices which may apply their own public safety policies and procedures; and
6. Persons inside in a hotel room, motel room, vacation rental, or similarly situated accommodation which is not accessible to the public. This exception does not extend to the common areas of the lodging establishment, including but not limited to lobbies, elevators, meeting rooms, restaurants, bars and event spaces.
7. If a person is under the age of six, use of a face covering is left to the discretion of that person's parent, guardian, or accompanying adult. Persons under the age of two

are not required to wear a mask under any circumstances as CDC guidelines state that a face covering is not appropriate for this age group; and

8. Persons whose compliance would be detrimental to their health, safety, or welfare. If this exception is being asserted for health reasons, the person asserting this exception is not required to carry or produce documentation verifying the health condition or to specifically identify the health condition to the compliance officer or law enforcement officer; and
9. Persons working in a business or profession who do not have interactions with other persons; and
10. Persons working in a business or profession who maintain social distancing from another person; and
11. Persons working in a business or profession where use of a face covering would prevent them from performing the duties of the business or profession; and
12. Persons exercising, while maintaining social distancing; and
13. Public safety, fire and other life safety and health care personnel, as their personal protective equipment requirements will be governed by their respective agencies; and
14. Persons communicating with a hearing-impaired person who needs to see the person's mouth to communicate.

D. Enforcement and Penalty for Violation.

1. This Ordinance is adopted pursuant to the City's home rule powers conferred by the Constitution of the State of Florida, and by general law and shall have the full force and effect of law.
2. It is the intent of this Ordinance to seek voluntary compliance with the provisions contained herein and to educate and warn of the dangers of non-compliance. However, in the event voluntary compliance is not achieved then, as a last resort, a violation of this Ordinance shall be a noncriminal civil infraction which carries a penalty of up to \$500.00. If a person elects not to request a hearing to contest a citation to the City's Code Enforcement Board or Special Magistrate, the civil penalty shall be \$50.00.

SECTION 2. It is hereby declared to be the intention of the City of Venice that the sections, paragraphs, phrases, clauses and sentences of this Ordinance shall be deemed severable, and if any section, paragraph, phrase, clause or sentence of this Ordinance is declared

unconstitutional or otherwise invalid by the judgment of a court of competent jurisdiction, then such unconstitutionality or invalidity shall not affect the validity of this Ordinance as a whole, or any of the remaining sections, paragraphs, phrases, clauses or sentences, other than the part held or declared to be invalid.

SECTION 3. Ordinance No. 2020-24, as adopted, will expire at 11:59 p.m. on Thursday, September 24, 2020. Nothing herein shall be construed to conflict, impair, sunset, or otherwise repeal the Face Covering Requirements provided for in Ordinance No. 2020-24. This Ordinance shall take effect at 12:00 a.m. on Friday, September 25, 2020.

SECTION 4. This Ordinance shall sunset or expire at 11:59 p.m. on October 31, 2020, unless otherwise extended or repealed prior to such expiration date. Extensions of this Ordinance may be adopted by Resolution of the City Council.

PASSED BY THE COUNCIL OF THE CITY OF VENICE, FLORIDA, THIS 22ND DAY OF SEPTEMBER, 2020.

First Reading: September 8, 2020

Final Reading: September 22, 2020

ADOPTION: September 22, 2020

Ron Feinsod, Mayor

Attest:

Lori Stelzer, MMC, City Clerk

I, Lori Stelzer, MMC, City Clerk of the City of Venice, Florida, a municipal corporation in Sarasota County, Florida, do hereby certify that the foregoing is a full and complete, true and correct copy of an Ordinance duly adopted by the City of Venice Council, a meeting thereof duly convened and held on the 22nd day of September, 2020, a quorum being present.

WITNESS my hand and the official seal of said City this 22nd day of September, 2020.

Lori Stelzer, MMC, City Clerk

Approved as to form:

Kelly M. Fernandez, City Attorney