PROPOSED
ORDINANCE NO. 36-20

ORDINANCE NO. 15-20

AN ORDINANCE
TO BE ENTITLED:

AN EMERGENCY ORDINANCE OF THE CITY OF PENSACOLA, FLORIDA, REQUIRING THE WEARING OF FACE COVERINGS; PROVIDING DEFINITIONS; PROVIDING MANDATORY REQUIREMENTS; PROVIDING EXCEPTIONS; PROVIDING A PENALTY THEREFOR; PROVIDING FOR SEVERABILITY; REPEALING CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on March 9, 2020, the Governor of Florida issued Executive Order Number 20-52, declaring a State of Emergency for the state of Florida related to COVID-19; and

WHEREAS, on March 18, 2020, the Mayor for the City of Pensacola issued Declaration of State of Emergency 20-01 declaring a state of emergency; and

WHEREAS, both the State's state of emergency order and the City's state of emergency declaration have been extended since the original issuances and currently are in effect; and

WHEREAS, COVID-19 poses a health risk to the residents of the City, particularly elderly residents and those who are immunosuppressed or otherwise have high-risk medical conditions; and

WHEREAS, the City finds that COVID-19 presents a danger to the health, safety, and welfare of the public; and

WHEREAS, COVID-19 is spread through airborne transmission from individuals speaking, coughing, and sneezing, and infectious droplet nuclei can spread for a great distance, although how far is not fully understood at present; and

WHEREAS, since April of 2020, the City has proactively directed the implementation of numerous efforts, including an aggressive communications campaign, to encourage persons in the City to practice social distancing, wash and sanitize their hands, clean high touch surfaces, and wear face coverings as community mitigation strategies to decrease the spread of COVID-19; and

WHEREAS, Governor DeSantis has issued a series of executive orders to re-open Florida, and some of the restrictions to flatten the curve and slow the spread of COVID-19 have correspondingly been relaxed; and

WHEREAS, the re-opening of the State has led and will continue to lead to more contact between individuals and the potential for increased community spread of the disease; and

WHEREAS, despite mitigation efforts, as reported by Florida Department of Health Officer ("Department of Health") John Lanza, the number of positive cases of COVID-19 in Escambia County has spiked with 159 positive cases reported on June 25, 2020, an average of 59 new cases each day for the previous seven days, and a seven-day positivity rate of 4.58% for the week beginning June 14, 2020, versus 2.23% for the previous seven days, which indicates greater local community spread and transmission of the disease; and

WHEREAS, 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 person-to-person transmission is likely; and

WHEREAS, conditions presented by the threat of COVID-19 continue to pose a threat to the public health that requires dynamic emergency response, including the imposition of additional mitigation strategies as conditions require; and

WHEREAS, the use of face coverings has been identified as a measure to assist in preventing individuals who may be shedding the COVID-19 virus from spreading it to other individuals; and

WHEREAS, to reduce the spread of the disease, the Centers for Disease Control and Prevention ("CDC") recommends the use of cloth face coverings in public settings where other social distancing measures are difficult to maintain, such as inside businesses; and

WHEREAS, the CDC advises that the virus can spread between persons interacting in close proximity even if those persons are asymptomatic (persons not exhibiting symptoms) or are pre-symptomatic (persons who transmit the virus to others before showing symptoms); and

WHEREAS, on June 22, 2020, after Florida reported more than 4,000 new cases of COVID-19 in a single day, State Surgeon General Scott Rivkees issued an additional public health advisory recommending people wear face coverings in any setting where social distancing is not possible, stating that in gatherings of fewer than 50 people, individuals should maintain at least six feet distance from each other and wear a face covering; 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, readily available, and can be made from household items, for which the CDC provides online guidance for making "do-it-yourself" face coverings for people who cannot or do not want to buy one from the increasing sources producing and selling face coverings; and

WHEREAS, the CDC and Dr. Rivkees delineates circumstances in which a face covering should not be worn; and

WHEREAS, adopting mandatory face covering requirements via ordinance instead of relying on an emergency order allows for enforcement through civil citations, fines, and other non-criminal means rather than criminal citations and prosecution; and

WHEREAS, the City Council specifically finds that the threat to public health at present constitutes an emergency within the meaning of section 166.041(3)(b), Florida Statutes, and that the adoption of this ordinance as an emergency ordinance is warranted; NOW THEREFORE

BE IT ORDAINED BY THE CITY OF PENSACOLA, FLORIDA:

SECTION 1. Findings. The legislative findings recited above are true and correct and are incorporated herein by reference as if fully set forth.

SECTION 2. Definitions.

(a) A "business" is a location with a roof overhead under which any business is conducted, goods are made, stored, processed, sold, or made available for sale, or where services are rendered, and includes outside extensions of the business, including patio areas and areas under a license to use agreement. The term includes transportation network companies, such as Ubers and Lyft; vehicles operated for mass transit except for ECAT buses and other mass transit controlled by Escambia County; taxis; pedicabs; limousines for hire; rental cars; other passenger vehicles for hire; and locations where non-profit, governmental, and quasi-governmental entities facilitate public interactions and conduct business. The term does not include places of worship.

(b) 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.html.

(c) "Wearing a face covering" means wearing a face covering over the person's nose and mouth and snuggly against the sides of the face.

(d) 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 3. Mandatory requirements.

(a) An individual in a business must wear a face covering while in that business establishment.

(b) All persons who own, manage, or are employed by a business located in the City must wear a face covering while on-duty and having direct or indirect customer contact, including persons working in a kitchen or otherwise preparing or serving food or beverages to customers.

(c) Each business must post signage notifying individuals of the requirement to wear a face covering as provided by this Emergency Ordinance.

(d) 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 4. Exceptions.

This Emergency Ordinance shall not apply to:

(a) A child under six years of age.

(b) A person who has one or more medical conditions or disabilities that prevent wearing a face covering, including anyone who has trouble breathing or is unconscious, incapacitated, or otherwise unable to remove a face covering without assistance. A person asserting this exception for medical conditions or disabilities is not required to carry or produce documentation verifying the health condition to a business or law enforcement.

(c) A person who is communicating with an individual who is hearing impaired who needs to see the mouth of the person speaking to facilitate communication.

(d) An individual who is obtaining a service involving the nose or face for which temporary removal of the face covering is necessary to perform the service.

(e) Public safety, police, fire, and other life safety and health care personnel whose personal protective equipment requirements are governed by their respective agencies and employers.

(f) A person in a government building owned or controlled by the federal, state, or Escambia County governmental entity or agency, the Escambia County School Board, or a County constitutional officers. If the governmental entity or agency occupies only part of a building, this Emergency Ordinance does not apply to that portion of the building.

(g) A person exercising while observing at least six feet of distancing from other persons.

(h) Persons while eating or drinking. It is the intent of this provision that a face covering be worn while traversing a business for ingress and egress, to use the restroom facilities, and while standing when persons are unable to maintain at least six feet of distancing.

(i) Business owners, managers, and employees who are in an area of a business that is not open to customers, patrons, or the public, provided that six feet of distance exists between persons. *This exception does not apply to employees who are present in the kitchen or other food and beverage preparation area of a business – those persons must wear face coverings.*

(j) An individual in a lodging establishment who is inside of the lodging unit, including, but not limited to, a hotel room, motel room, vacation rental unit, timeshare unit, or similar unit.

(k) Children in a business operating as a daycare or children's camp so long as the business is following CDC and Escambia County Department of Health guidelines for those activities.

SECTION 5. Enforcement.

(a) An initial 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. Prior to the issuance of a non-criminal citation, the individual will be directed to comply with the Emergency Ordinance or be able to explain how an exception in Section 3 applies to them. Failure to comply with the requirements of this Emergency Ordinance presents a serious threat to the public health, safety, and welfare, and a citation may be issued for such a violation after the inquiry referenced above.

(b) The penalty for a violation of this Emergency Ordinance is:

(1) For a first offense, a fine of $50.00.

(2) For a second offense, a fine of $125.00.

(3) For a third offense, a fine of $250.00.

(4) For a fourth or subsequent offense, this ordinance may be enforced pursuant to section 1-1-8 of the City Code.

(c) This Emergency Ordinance may be enforced through a complaint for injunctive relief in Circuit Court seeking to enjoin violations that occur within the city limits.

SECTION 6. Sunset Date. Unless rescinded or extended by subsequent act of the City Council, this Emergency Ordinance shall sunset upon the expiration of the City's state of emergency as it may be extended.

SECTION 7. Severability. If any word, phrase, clause, paragraph, section or provision of this ordinance or the application thereof to any person or circumstance is held invalid or unconstitutional, such finding shall not affect the other provision or applications of the ordinance which can be given effect without the invalid or unconstitutional provisions or application, and to this end the provisions of this ordinance are declared severable.

SECTION 8. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflicts.

SECTION 9. The City Council finds that an emergency exists necessitating the adoption of this ordinance at a single meeting. This ordinance shall take effect immediately upon its passage by the City Council.

Adopted: June 30, 2020

Approved: Jewel Cunna La-Wynn
President of City Council

Attest:
Linda L Burnett
City Clerk