

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
MARTIN COUNTY, FLORIDA**

ORDINANCE NO.

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF MARTIN COUNTY, FLORIDA AMENDING ORDINANCE 1140 MANDATING PERSONS WEAR FACE COVERINGS IN PUBLIC PLACES; PROVIDING FOR CONFLICTING PROVISIONS; SEVERABILITY; APPLICABILITY; FILING WITH THE DEPARTMENT OF STATE; EFFECTIVE DATE AND DURATION; AND NON-CODIFICATION.

WHEREAS, the Board of County Commissioners of Martin County, Florida (Board) is authorized by Chapter 125, Florida Statutes, to adopt ordinances and resolutions necessary for the exercise of its powers; and

WHEREAS, Novel Coronavirus Disease 2019 (COVID-19) is a severe acute respiratory illness that can spread among humans through respiratory transmission and presents a wide range of symptoms, some of which are similar to those of influenza; and

WHEREAS, the Centers for Disease Control (CDC) advises 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; and studies and evidence on infection control report that these droplets usually travel around 6 feet (about two arms lengths); 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 World Health Organization (WHO) has declared a pandemic related to COVID-19; and

WHEREAS, the Center for Disease Control and Prevention (CDC) has declared the potential public health threat posed by COVID-19 as "high" both in the United States and throughout the world; and

WHEREAS, on March 1, 2020, Governor Ron DeSantis issued Executive Order 20-51, directing that a Public Health Emergency be declared in the State of Florida; and

WHEREAS, on March 9, 2020, Governor Ron DeSantis issued Executive Order 20-52, declaring a State of Emergency in the State of Florida regarding the COVID-19 pandemic; and

WHEREAS, at this time, there is no vaccine for COVID-19 and it is easily transmitted among people. As a result, a serious threat of impact from COVID-19 exists throughout Martin County; and

WHEREAS, the spread of COVID-19 has posed a danger to life and the economic well-being of Martin County residents; and

WHEREAS, Martin County began implementing preparations to address the serious public health threat on January 31, 2020; and

WHEREAS, on April 1, 2020, the Governor of the State of Florida issued Executive Order 20-91 putting in place a state-wide safer at home order and which permitted various essential businesses and activities during the COVID-19 Emergency; and

WHEREAS, on May 4, 2020, Executive Order 20-112, Phase 1: Safe. Smart. Step-by-Step Plan for Florida's Recovery, which provided measures to slowly re-open Florida, became effective; and

WHEREAS, on May 18, 2020 Executive Order 20-123, Full Phase I: Safe. Smart. Step-by-Step. Plan for Florida's Recovery, which expanded the measures to re-open Florida, became effective; and

WHEREAS, on June 4, 2020, Executive Order 20-139, Phase 2, Safe. Smart. Step-by-Step. Plan for Florida's Recovery further expanding the re-opening of businesses in Florida, became effective; and

WHEREAS, after the reopening efforts of Executive Order 20-112, Executive Order 20-123 and Executive Order 20-139, Martin County saw a significant increase in COVID-19 positive cases, and in particular after the June 5, 2020, Phase 2 re-opening efforts; and

WHEREAS, the CDC and Florida Department of Health continue to remind residents that by wearing a face covering, the resident protects others from exposure as well as themselves; and

WHEREAS, the State of Florida Department of Health, the CDC and the Cleveland Clinic have recommended that all persons wear cloth face coverings while in public to help control the spread of COVID-19; and

WHEREAS, in a recent United States Supreme Court Case, the Court denied injunctive relief where California limited attendance at places of worship due to COVID-19. Chief Justice Roberts described COVID-19 as “a novel severe acute respiratory illness

that has killed...more than 100,000 nationwide” and noted that “(a)t this time there is no known cure, no effective treatment, and no vaccine” and “because people may be infected, be asymptomatic, they may unwittingly infect others.” Chief Justice Roberts also stated “(t)he precise question of when restrictions on particular social activities should be lifted during the pandemic is a dynamic and fact-intensive matter subject to reasonable disagreement. Our Constitution principally entrusts the safety and the health of the people’ to the politically accountable officials of the States ‘to guard and protect.’ ... When those officials ‘undertake to act in areas fraught with medical and scientific uncertainties,’ their latitude ‘must be especially broad.’ Where those broad limits are not exceeded, they should not be subject to second-guessing by an ‘unelected federal judiciary,’ which lacks the background, competence, and expertise to assess public health and is not accountable to the people.” *S. Bay United Pentecostal Church v. Newsom*, 140 S. Ct. 1613 (2020); and

WHEREAS, Alachua County issued Emergency Order 2020-21 requiring face masks in certain circumstances. The County’s Emergency Order was challenged in Florida’s Circuit Court and in Federal District Court. Both Courts issued Orders denying Plaintiffs’ Emergency Motions for Temporary Injunction. In denying the request for temporary injunction, Florida Circuit Judge Donna M. Kline stated, “The protection of the safety and welfare of the public is inherent in the role of local government ... The requirement to wear a facial covering during the limited circumstance set forth in the ordinance is a minimal inconvenience; and it’s benefits to the public in potentially reducing the spread of COVID-19 outweighs any inconvenience. Here, there is a global pandemic involving COVID-19, a virus which the CDC and others advise is spread through airborne transmission and is spread by asymptomatic individuals. Multiple sources relied upon by the County reflect that mitigation is depending upon the use of social distancing and personal protection equipment, such as face masks/coverings. The County’s need to take measures to control the spread of COVID-19 clearly outweighs the Plaintiff’s private interest in not wearing a mask in the limited circumstances required by the county’s emergency order; and an injunction in this situation would disserve the public interest.” *Green v. Alachua County*, Case No.: 01-2020-CA-001249 (Order dated May 26, 2020). *See also Ham v. Alachua County Board of County Commissioners et. al.*, Case No. 1:20cv111-MW/GRJ (Order dated June 3, 2020 by Chief United States District Judge Mark E. Walker) (“Plaintiffs have not demonstrated that Alachua County exceeded its broad limits and this Court, like the Supreme Court, will not engage in second-guessing”); and

WHEREAS, similar Court rulings have been entered throughout the State of Florida Circuit Courts, specifically in Palm Beach County, Alachua County, Leon County, Jacksonville, Gadsden, Deland, Orange County and Seminole County denying challenges to face covering ordinances or emergency orders issued by the counties; and

WHEREAS, in the beginning of July, Martin County was experiencing a spike in COVID-19 positive cases with record-breaking positive COVID-19 tests results coming in daily; and

WHEREAS, the Cleveland Clinic and doctors in our community expressed grave concern at the time that hospital admittance for COVID-19 had a significant increase in

that admittance numbers had been doubling over the course of two-week intervals; and

WHEREAS, as a result of the COVID-19 crisis, on July 8, 2020, Martin County adopted Ordinance 1136 on an emergency basis, which mandated wearing face coverings in public places; and

WHEREAS, after Ordinance 1136 was adopted, Martin County began experiencing a decline in the percentage of daily positive test results; and

WHEREAS, Ordinance 1136 expired on August 8, 2020 and face coverings were no longer required in public places in Martin County; and

WHEREAS, Martin County issued Emergency Order 20-15 on August 9, 2020 strongly encouraging persons to wear face coverings in public; and

WHEREAS, on August 25, 2020, the Board was compelled to take additional steps to minimize the spread of COVID-19 in response to the increasing number of positive COVID-19 cases and rising number of deaths associated with COVID-19 to protect the health, safety and welfare of Martin County residents and visitors; and

WHEREAS, on August 25, 2020, the Board adopted Ordinance 1140 requiring persons wear face coverings in public; and

WHEREAS, on September 25, 2020, Governor DeSantis began Phase 3 Safe. Smart. Step-by-Step. Plan for Florida's Recovery which eliminated all COVID-19 restrictions on businesses; and

WHEREAS, on September 25, 2020, Governor DeSantis issued Executive Order 20-244 which suspended the collection of fines and penalties associated with COVID-19 enforced orders and ordinances upon individuals; and

WHEREAS, based upon the implementation of Phase 3 and Executive Order 20-244, the Board finds that the amendment of Ordinance 1140 to strongly encourage instead of mandate persons wear face coverings in public places is in the best interest of Martin County.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MARTIN COUNTY, FLORIDA, THAT:

PART I. INCORPORATION OF RECITALS AS LEGISLATIVE FINDINGS.

The recitals of this ordinance are incorporated herein and constitute the legislative findings of the Board. The recitals are made fully part of this ordinance as if the recitals were set out fully herein.

PART II. ORDINANCE 1140 MANDATING PERSONS WEAR FACE COVERINGS IN PUBLIC PLACES IS HEREBY AMENDED AS FOLLOWS:

1. Face Coverings. Persons are strongly encouraged to ~~must~~ wear face coverings in public as follows:

a. **Indoor Public Places, Businesses and Establishments.** Face coverings are strongly encouraged to ~~must~~ be worn by all persons while obtaining or providing any goods or services or otherwise visiting or working in any indoor public place, business or establishment where the presence of another person is probable.

b. **Outdoor Public Places, Businesses and Establishments.** Face coverings are strongly encouraged to ~~must~~ be worn by all persons while obtaining or providing any goods or services or otherwise visiting or working in outdoor public places, businesses and establishments where social distancing in accordance with CDC guidelines is not possible and/or not being practiced.

c. **Restaurants and Food Service Establishments.** Face coverings are strongly encouraged to ~~must~~ be worn by all persons in restaurants and any establishment that serves food or beverages whether indoors or outdoors except when actively consuming food or beverages.

d. **County and Municipal Government Facilities.** All members of the public accessing government buildings for the purposes of conducting public business, visitation, contracting and maintenance, delivery or any other public activity requiring a presence in a government building, excluding those persons exercising their right to vote, are strongly encouraged to ~~shall~~ wear face coverings at all times while present in the building. For purposes of this ordinance, government buildings shall mean any Martin County or municipal-owned and operated buildings, including, but not limited to, office buildings, fire rescue stations, service centers, recreational facilities and libraries.

2. Definitions.

a. **Business and Establishment.** Businesses and establishments are any locations in which business is conducted, goods are made, stored, sold or processed or services are rendered. Businesses and establishments include, but are not limited to, restaurants, bars, retail stores, salons, massage parlors, tattoo parlors, hotels, grocery stores, gyms, fitness centers, pharmacies, indoor recreational facilities, hospitals, medical offices, dental offices, movie theaters, concert halls, auditoriums, bowling alleys, playhouses, arcades, public transit and vehicles for hire. For purposes of this ordinance, indoor businesses and establishments include any area or location that is outdoors and has a roof overhead or other overhead covering and one wall where any business is conducted, goods are made, stored, sold or processed or services are provided.

b. **Face covering.** A face covering includes any covering which snugly covers the nose and mouth and is secured in place. Persons who wear masks should review the CDC and Florida Department of Health guidelines regarding properly and safely applying, removing and cleaning masks. Medical and surgical masks, such as N95 masks or other similar medical surgical masks, should be reserved for health care personnel, police, firefighters, emergency management and other first responders engaged in life/safety activities.

c. **Indoor public place.** An indoor public place is any location in which the public has or may obtain legally permissible access whether publicly or privately owned that is under a roof or other overhead covering and has at least one wall.

d. **Outdoor public place.** An outdoor public place is any location in which the public has or may obtain legally permissible access whether publicly or privately owned that has no walls.

3. **Exemptions.** Face coverings are not required for the following:

a. Children under six (6) years of age and any child while under the custody of a licensed childcare facility, including schools, summer camps and daycare centers.

b. Individuals prohibited from wearing face coverings by Federal or State safety or health regulations.

c. Public safety, fire or other life safety personnel that have personal protective equipment requirements governed by their respective agencies.

d. Persons actively engaged in exercise and who are social distancing in accordance with CDC guidelines.

e. Persons providing or receiving goods and services from a business or establishment for the shortest practical period of time during which the receipt of such goods or services necessarily precludes the wearing of a face covering such as, but not limited to, consuming food or beverage or receiving dental services, facial grooming or treatments.

f. Persons who have a medical condition or disability that makes the wearing of face coverings unsafe.

i. When a person asserts he or she has a disability that prevents the individual from wearing a mask, the owner, manager or employee of a business or establishment may exclude the person, even if they have a disability, as they pose a direct threat to the health and safety

of employees and other patrons, even if asymptomatic, and the business or establishment is strongly encouraged to ~~shall~~ reasonably accommodate the disabled person in a manner that does not fundamentally alter its operations or cause an undue hardship or jeopardize the health of the employees and customers.

g. Persons may temporarily remove face coverings while assisting persons who are hearing impaired or who rely on reading lips in order to communicate.

h. Persons in private rooms of a lodging establishment, such as hotel, motel or vacation rental; however, face coverings are strongly encouraged to ~~must~~ be worn in common areas as proscribed by this ordinance.

i. Persons engaged in outdoor work or recreation with appropriate social distancing pursuant to CDC guidelines in place and being practiced.

4. **Signage.** All public places, businesses and establishments subject to the provisions of this ordinance shall conspicuously post signage as follows:

a. All restaurants and food service establishments shall post the signage attached as Exhibit 1 designated “Restaurants and Food Service Establishment.” Signs are available in English and Spanish at www.martin.fl.us/coronavirus.

b. All County and municipal government facilities, indoor public places, businesses and establishments, other than restaurants and food service establishments, shall post the signage attached as Exhibit 2 designated “Indoor Public Places, Businesses and Establishments.” Signs are available in English and Spanish at www.martin.fl.us/coronavirus.

c. All outdoor public places, businesses and establishments, other than restaurants and food service establishments, shall post the signage attached as Exhibit 3 designated “Outdoor Public Places.” Signs are available in English and Spanish at www.martin.fl.us/coronavirus.

d. The signage required in paragraphs 4(a), (b) and (c) above must be at least 8 ½ x 11” in size and printed in color if possible.

e. Signage shall be posted in multiple languages including English and Spanish.

f. Signage must be posted conspicuously for easy visibility at all entry points.

5. ~~Enforcement and Penalties.~~

~~a. — A violation of this ordinance is a noncriminal infraction and shall be enforced by County law enforcement agencies. A violation of this ordinance does not authorize the search or arrest of an individual. It is the intent of this ordinance to seek voluntary compliance with the provisions contained herein and to educate and warn of the benefits of compliance and the dangers of noncompliance. Prior to the issuance of a citation, the individual will be asked to comply with the ordinance or be able to explain how an exemption in paragraph 3 applies to them. It is up to the discretion of the law enforcement officer to determine whether the circumstances warrant the issuance of a written warning to the individual for non-compliance. Failure to comply with the requirements of this ordinance presents a serious threat to the public health, safety and welfare. A citation may be issued for a violation after the above inquiry and if the individual received a prior written warning.~~

~~b. — The penalty for a violation of this ordinance is:~~

~~i. First offense: A fine of \$50.00.~~

~~ii. Second offense: A fine of \$100.00.~~

~~iii. Third offense and each subsequent offense: A fine of \$250.00.~~

~~iv. All other remedies available at law or equity, including injunctive or other equitable relief, remain available to the County, even after issuance of a citation.~~

PART III. CONFLICTING PROVISIONS.

Special acts of the Florida Legislature applicable only to unincorporated areas of Martin County, Martin County ordinances, County resolutions, or parts thereof, in conflict with this ordinance are hereby superseded by this ordinance to the extent of such conflict except for ordinances concerning either adoption or amendment of the Comprehensive Plan.

PART IV. SEVERABILITY.

If any portion of this ordinance is for any reason held or declared to be unconstitutional, inoperative or void by a court of competent jurisdiction, such holding shall not affect the remaining portions of this ordinance. If the ordinance or any provision thereof shall be held to be inapplicable to any person, property or circumstance by a court of competent jurisdiction, such holding shall not affect its applicability to any other person, property or circumstance.

PART V. APPLICABILITY.

This ordinance shall apply in the incorporated and unincorporated areas of Martin County. This ordinance does not apply to the internal operations of the local governments within Martin County, Martin County Constitutional Offices, the Martin County School District, the State University System, the State College System, the State of Florida, Federal agencies, religious organizations in their houses of worship or public utilities not associated with Martin County who are encouraged to adopt their own rules and procedures consistent with the matters set forth herein.

PART VI. FILING WITH DEPARTMENT OF STATE.

The Clerk shall be and is hereby directed forthwith to scan this ordinance in accordance with Rule 1B-26.003, Florida Administrative Code, and file same with the Florida Department of State via electronic transmission.

PART VII. EFFECTIVE DATE AND DURATION.

This ordinance shall immediately take effect upon filing with the Office of Secretary of State and shall remain in effect until the expiration of Martin County's State of Local Emergency, as may be extended by subsequent order or declaration or upon repeal by the Board, whichever occurs earlier.

PART VIII. NON-CODIFICATION.

Due to the temporary nature of this ordinance, the provisions of this ordinance shall be incorporated into the General Ordinances, Martin County Code, but shall not be codified.

DULY PASSED AND ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS OF MARTIN COUNTY THIS 13th DAY OF OCTOBER 2020.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
MARTIN COUNTY, FLORIDA

CAROLYN TIMMANN, CLERK
OF THE CIRCUIT COURT AND
COMPTROLLER

HAROLD E. JENKINS II, CHAIRMAN

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

SARAH W. WOODS, COUNTY ATTORNEY

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