

## **ORDINANCE NO. 2020-**

### **AN EMERGENCY ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA, PROVIDING FOR ADOPTION OF RECITALS; PROVIDING FOR FACE COVERING REQUIREMENTS AND EXCEPTIONS; PROVIDING FOR PENALTIES AND ENFORCEMENT; PROVIDING FOR APPLICABILITY, CONFLICT, SEVERABILITY AND AN EFFECTIVE DATE**

**WHEREAS**, COVID-19, a respiratory illness caused by a virus that spreads rapidly from person to person that can cause serious illness or death, constitutes a clear and present threat to the lives, health, welfare, and safety of the people of Indian River County, and

**WHEREAS**, on March 1, 2020, Governor Ron DeSantis, in his capacity as Governor of the State of Florida, issued Executive Order 20-51, directing the declaration of a public health emergency and establishing the State of Florida's response to COVID-19; and

**WHEREAS**, on March 1, 2020, the State Surgeon General declared a public health emergency in the State of Florida; and

**WHEREAS**, on March 9, 2020, Governor Ron DeSantis, in his capacity as Governor of the State of Florida, issued Executive Order Number 20-52, declaring that a state of emergency exists in the State of Florida by reason of COVID-19; and

**WHEREAS**, on March 17, 2020, due to COVID-19, the County Administrator declared that a local state of emergency existed in all of Indian River County; and

**WHEREAS**, the Centers for Disease Control and Prevention (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; and

**WHEREAS**, The CDC advises that a significant portion of individuals with coronavirus 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, 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

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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 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**, 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**, the CDC, the Florida Department of Health and the University of Florida recommend the use of face coverings, including those which are homemade to slow the spread of the disease; and

**WHEREAS**, the gradual reopening of the State and the County will lead to more contact between individuals and lead to more potential for the increased community spread of the disease. Face masks are of great assistance in preventing individuals from spreading it to other individuals; and

**WHEREAS**, Governor DeSantis, on April 29, 2020, issued Executive Order 20-112 designed to ease some restrictions established by Executive Order 20-90 in the first phase of a plan to fully reopen the State; and

**WHEREAS**, Executive Order 20-112 does not preempt the authority of local governments to add additional restrictions to businesses opened by the Governor; 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 the 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, 590 U.S. 2020)( 2020 WL 2813056, at 1); and

**WHEREAS**, Alachua County issued Emergency Order 2020-21 requiring face masks in certain circumstances. The County's Emergency Order was challenged in

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State 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, State Circuit Judge Donna M. Keim 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, its 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 outweigh 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 secondguessing"); and

**WHEREAS**, on June 5, 2020, Governor Ron DeSantis issued Executive Order 20- 139, moving all counties in Florida, other than Miami- Dade, Broward and Palm Beach Counties, into Phase 2 of the plan issued by the Task Force to Re-Open Florida, which Order supersedes Executive Order 20-91, the Safer at Home Order, and supersedes in part, and extends and modifies other provisions of, Executive Order 20-112; and

**WHEREAS**, on June 20, 2020, the State Surgeon General issued a Public Health Advisory providing that all individuals in Florida should wear face coverings in any setting where social distancing is not possible; and

**WHEREAS**, the Florida Medical Association President Dr. Ronald Giffler issued a statement saying that "the Florida Medical Association, the state's largest physician organization, encourages local officials to adopt regulations requiring individuals to wear face coverings in public places" and applauded municipalities in Florida that have already adopted mandatory mask use ordinances; and

**WHEREAS**, based on recent information and data from the Indian River County Department of Health, the number of confirmed cases of COVID-19 in Indian River County has increased significantly since additional re-openings were authorized under Phase 2 of the Governor's Plan for Florida' s Recovery; and

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**WHEREAS**, based on advice from medical professionals, the number of confirmed cases of COVID-19 in Indian River County will increase exponentially if additional measures to stop or slow the spread of COVID-19 are not instituted; and

**WHEREAS**, the County's hospitals and doctors in our community have expressed concern that over the past month, hospital admittance for COVID-19 has had a significant increase; 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**, additional steps are needed to minimize the spread of COVID- 19 in response to the recent spike in positive COVID-19 cases and hospital admittances; and

**WHEREAS**, per CDC guidance, persons working in restaurants and businesses frequently come into close contact with members of the public and thus have a greater risk of spreading COVID- 19. Wearing face coverings will significantly help reduce the spread of COVID-19 in Indian River County; and

**WHEREAS**, on June 26, 2020, the County Administrator issued Emergency Order No. 20-15 concerning face coverings; and

**WHEREAS**, in determining whether to enact this Ordinance, the Board considered information received from the Department of Health, the University of Florida, the State Surgeon General, the CDC and other health care providers and medical professionals regarding challenges raised at this point in time by COVID-19; and

**WHEREAS**, adopting face covering requirements via ordinance, as opposed to local emergency powers, would permit enforcement through civil citations and fines instead of criminal prosecution as a second-degree misdemeanor.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA THAT:**

### **Section 1. Recitals Adopted**

Each of the recitals set forth above is hereby adopted, re-adopted and incorporated herein.

### **Section 2. Face Coverings**

1. Indoor Public Places, Businesses and Establishments. Face coverings 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 social distancing is not possible.

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2. All persons entering any indoor County facility including, but not limited to; the County Administration Building, libraries, iG center, fire rescue stations, etc. where social distancing is not possible, shall wear face coverings.
3. All persons utilizing public transit and transportation in Indian River County shall wear face coverings.
4. All persons physically present in any outdoor public place attending a gathering or event of greater than 50 people where social distancing of at least 6 feet is not possible shall wear face coverings.
5. All other persons physically present in any outdoor public place in Indian River County with less than 50 people are strongly encouraged to wear face coverings and maintain social distancing of at least 6 feet.
6. A face covering includes any covering which snugly covers the nose and mouth, whether store bought or homemade, and which 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.
7. 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.
8. 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.
9. 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.
10. EXCEPTIONS: A face covering shall not be required for the following persons:
  - A. Persons under the age of two years;

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B. Persons observing social distancing in accordance with CDC guidelines;

C. Persons for whom a face covering would cause impairment due to an existing health condition or disability; then a face shield is strongly recommended;

D. Persons working in a business or profession who do not have interactions with other persons;

E. Persons working in a business or profession who maintain social distancing from another person or work in their personal office with no interactions from other persons;

F. 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;

G. Persons exercising, while maintaining social distancing;

H. Persons eating or drinking;

I. Public safety, law enforcement, fire and other life safety and health care personnel, as their personal protective equipment requirements will be governed by their respective agencies; or

J. The requirement shall not apply when a person who is hearing-impaired needs to see the mouth of someone wearing a face covering in order to communicate. A face shield is strongly recommended.

### **Section 3. Penalties and Enforcement.**

- 1) 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 noncompliance. A violation of this Ordinance is a noncriminal, civil infraction. A violation of this Ordinance does not authorize the search or arrest of an individual. Indian River County Code Inspectors and Indian River County law enforcement officers are designated to enforce this Ordinance and are authorized to issue a citation if he or she has reasonable cause to believe that a person has committed an act in violation of this Ordinance. Prior to the issuance of a citation, the individual or business will be asked to comply with the Ordinance or be able to explain how an exception in Section 2 applies to them. Failure to comply with the requirements of this 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. Any individual may contest a citation in county court and the maximum civil penalty shall not exceed \$500.

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2) The penalty for a violation of this Emergency Ordinance, if uncontested, is:

a) For a first offense, a fine of \$25.00.

b) For a second offense, a fine of \$50.00.

c) For a third and each subsequent offense, a fine of \$100.00.

d) All other remedies available at law or equity, including injunction, but excluding incarceration, remain available to the County, even after issuance of a citation.

### **Section 4. Geographic Applicability.**

This Ordinance shall apply throughout the unincorporated areas of Indian River County.

### **Section 5. Severability.**

If any part of this ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, the remainder of this ordinance shall not be affected by such holding and shall remain in full force and effect.

### **Section 6. Conflict.**

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

**Section 7. Effective Date.** This ordinance shall become effective on July 16, 2020.

This ordinance was advertised in the Indian River Press Journal on the 9<sup>th</sup> day of July, 2020, for a public hearing to be held on the 14<sup>th</sup> day of July, 2020, at which time it was moved for adoption by Commissioner \_\_\_\_\_, seconded by Commissioner \_\_\_\_\_, and adopted by the following vote:

Chairman Susan Adams	_____
Vice-Chairman Joseph E. Flescher	_____
Commissioner Tim Zorc	_____
Commissioner Peter D. O'Bryan	_____
Commissioner Bob Solari	_____

The Chairman thereupon declared the ordinance duly passed and adopted this 14<sup>th</sup> day of July, 2020.

**BOARD OF COUNTY  
COMMISSIONERS OF INDIAN RIVER  
COUNTY, FLORIDA**

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By: \_\_\_\_\_  
Susan Adams, Chairman

**ATTEST: Jeffrey R. Smith, Clerk  
and Comptroller**

By: \_\_\_\_\_  
Deputy Clerk

This Ordinance was filed with the Department of State on the \_\_\_\_ day of \_\_\_\_\_, 2020.