

ORDINANCE NO. 638

AN EMERGENCY ORDINANCE OF THE CITY OF ORANGE CITY, FLORIDA, REENACTING THE REQUIREMENT FOR FACE COVERINGS IN INDOOR LOCATIONS IN ORDER TO CONTROL THE SPREAD OF COVID-19; AMENDING ENFORCEMENT AGAINST INDIVIDUALS; PROVIDING FOR APPLICABILITY AND CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Orange 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 sneezing, speaking, and coughing, and infectious droplet nuclei can spread for a great distance; and

WHEREAS, the use of face coverings has been identified as one of the primary means to prevent individuals who may be infected with COVID-19 from spreading it to other individuals; and

WHEREAS, to reduce the spread of the disease, the Centers for Disease Control ("CDC") recommends the use of cloth face coverings in public settings where other social distancing measures are difficult to maintain since many individuals with no symptoms can spread the virus, and even individuals who develop symptoms can transmit the virus to others before showing symptoms; and

WHEREAS, on June 22, 2020, pursuant to Section 381.00315(1), Florida Statutes, the State Surgeon General / State Health Officer issued a public health advisory which advised ALL persons in Florida, with certain enumerated exceptions, wear face coverings in any setting where social distancing is not possible; and

WHEREAS, on June 30, 2020, Coronavirus Task Force member Dr. Anthony Fauci gave alarming testimony to Congress regarding the surge in COVID-19 cases and, along with the director of the CDC, urged all citizens to wear face coverings to slow the spread of COVID-19; and

WHEREAS, on August 12, 2020, the American Association of Medical Colleges released National Guidance on Face Coverings which stated “Wearing a mask is one step everyone can take to protect themselves, their family, and their community. . . . In the Absence of a national policy, we are asking that state and local governments, and all Americans, join us in this effort”; and

WHEREAS, the re-opening of the State in general, and the City of Orange City in particular, while necessary for economic and social well-being of the residents and community as a whole, has led to more contact between individuals and a marked increase in the community spread of COVID-19, and

WHEREAS, with these mitigation efforts, the number of confirmed cases of COVID-19 has continued to remain between 5%-7% in the State of Florida and Volusia County since August 16, 2020 which indicates that wearing a face covering has been effective in curtailing 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 and Florida's transition to Phase 3 reopening; and

WHEREAS, cloth face coverings are relatively inexpensive and readily available as the CDC states that they can be made from household items and provides online guidance for making "do-it-yourself" coverings for people who cannot or do not want to buy one or otherwise cannot obtain a free face covering; and

WHEREAS, free face coverings are available to the public at various locations around the County and in the City; and

WHEREAS, for the reasons stated above in response to the COVID-19 public health crisis the City Council adopted Ordinance 632 on July 6th, 2020 and Ordinance 633, on August 25th, 2020 requiring individuals to wear face coverings while inside business establishments; and

WHEREAS, on September 25th, 2020, Governor Ron DeSantis issued Executive Order 20-244 suspending the collection of fines and penalties associated with COVID-19 emergency ordinances upon individuals; and

WHEREAS, Section 5.04 of the City of Orange City Charter states that an emergency ordinance automatically repeals as of the sixty-first (61st) day following the date it was adopted; and

WHEREAS, Section 5.04 of the City of Orange City Charter provides that an emergency ordinance can be re-enacted if the emergency still exists; and

WHEREAS, the City Council has determined that the emergency still exists, and the immediate re-enactment of this Emergency Ordinance, along with amendment to Section 4, is necessary in order to mitigate the continued spread of COVID-19; and

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

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ORANGE CITY, FLORIDA:

Section 1. Incorporation of Recitals as Legislative Findings.

The recitals of this Emergency Ordinance are incorporated herein and constitute the legislative findings of the City Council. The recitals are made fully a part of this Emergency Ordinance as if the recitals were set out in a section hereunder.

Section 2. Definitions.

- (i) Face Covering. 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>.
- (ii) Business Establishment. A "business establishment" means location with a roof overhead under which any business is conducted, goods are made or stored or processed or where services are rendered. The term "business establishment" also includes places of worship. The term "business establishment" does NOT include locations where governmental entities conduct business (governmental entities having their own protocols regarding face coverings). A "business establishment" includes a "lodging establishment."
- (iii) Lodging Establishment. 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.

- (i) An individual in a business establishment must wear a face covering while in that business establishment.
- (ii) The requirement in this section does not apply to:

- a. A child under the age of two.
- b. Persons who have trouble breathing due to a chronic pre-existing condition or individuals with a documented or demonstrable medical problem. It is the intent of this provision that those individuals who cannot tolerate a facial covering for a medical, sensory or any other condition which makes it difficult for them to utilize a face covering and function in public are not required to wear one.
- c. Public safety, fire, and other life safety and health care personnel, as their personal protective equipment requirements will be governed by their respective agencies.
- d. Persons exercising while observing at least 6 feet of distancing from another person.
- e. Restaurant and bar patrons while eating or drinking. It is the intent of this provision that a face covering will be worn while traversing a business establishment for ingress and egress, to use the restroom facilities, and while otherwise standing when persons are unable to maintain at least 6 feet of distancing.
- f. Business owners, managers, and employees who are in an area of a business establishment that is not open to customers, patrons, or the public, provided that 6 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 establishment.
- g. Medical, dental or other health care facilities or offices, as mask wearing in those facilities will be regulated pursuant to guidance specifically directed to those particular facilities.
- h. Persons who are separated from any other person by means of barriers such as plastic face shields, plastic or glass barriers, or other devices that effectively prevent the transmission of the COVID-19 virus.
- i. A person 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.
- j. Any person in a school, regardless of whether public or private, as mask wearing in schools will be regulated by the schools.
- k. Any person in a place of worship maintaining at least six feet of distancing.

- (iii) Every business establishment is required to post signage notifying all persons of the requirement to wear a face covering as provided in this section.
- (iv) 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. Penalties and Enforcement.

- (i) A violation of this Emergency Ordinance is a noncriminal infraction. 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.
- (ii) The penalty for a violation of this Emergency Ordinance is:
 - a. For a first offense, a fine of \$25.
 - 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, remain available to the City, even after issuance of a citation.
- (iii) Pursuant to EO 20-244, fines and penalties that may be assessed pursuant to this Emergency Ordinance cannot be collected against individuals.

Section 5. Applicability and Conflict.

This Emergency Ordinance shall apply throughout the corporate limits of the City of Orange City. In the event that any provision of this Emergency Ordinance conflicts with or is superseded by a subsequently issued executive order of the Governor or of the President of the United States, such provision shall be deemed inapplicable and deemed to be severed from this Emergency Ordinance, with all remaining provisions of this Emergency Ordinance to remain in full force and effect.

Section 6. Severability.

If any word, phrase, clause, section, or portion of this Emergency Ordinance is declared by any court of competent jurisdiction to be invalid, void, unconstitutional, or unenforceable, then all remaining provisions and portions of this Emergency Ordinance shall remain in full force and effect.

Section 7. Effective Date.

This Emergency Ordinance shall re-enact Ordinance 633, with the above amendments to Section 4, and take effect at 12:01 a.m. on Wednesday, October 14, 2020 and shall remain in effect until the earlier of the date on which any of the following occurs:

- The state of emergency related to COVID-19 declared by the Governor of Florida expires; or
- The County of Volusia issues a uniform, county-wide, ordinance, resolution or other order regulating face coverings; or
- The City Commission rescinds this Emergency Ordinance; or
- This Ordinance automatically repeals as per Section 5.04 of the City of Orange City Charter.

ROLL CALL VOTE AS FOLLOWS (Ordinance No. 638):

<u>yes</u>	Jim Mahoney	Kelli Marks	<u>yes</u>
<u>yes</u>	O. William Crippen	Martin E. Harper	<u>yes</u>
<u>yes</u>	Jeff Allebach	Bill O'Connor, Vice Mayor	<u>No</u>
<u>yes</u>	Gary A. Blair, Mayor		

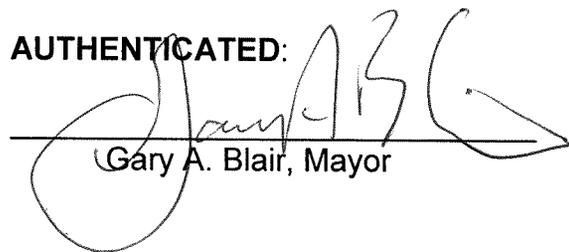
PASSED and ADOPTED this 13th day of October, 2020.

ATTEST:



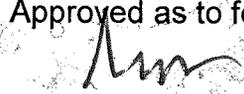
Melani Beringer, CMC, Interim City Clerk

AUTHENTICATED:



Gary A. Blair, Mayor

Approved as to form and legal sufficiency:



William E. Reischmann, Jr., City Attorney