ST. LUCIE COUNTY EMERGENCY ORDINANCE NO. 2020-020

AN EMERGENCY ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF ST. LUCIE COUNTY, FLORIDA, PROVIDING FOR INCORPORATION OF RECITALS AS LEGISLATIVE FINDINGS; PROVIDING FOR DEFINITIONS; PROVIDING FOR MANDATORY REQUIREMENTS FOR FACE COVERINGS; PROVIDING FOR EXCEPTIONS; PROVIDING FOR PENALTIES AND ENFORCEMENT; PROVIDING FOR APPLICABILITY AND CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR FILING WITH THE DEPARTMENT OF STATE; PROVIDING AN EFFECTIVE DATE

WHEREAS, the Board of County Commissioners of St. Lucie County, Florida has made the following determinations:

1. COVID-19, a respiratory illness caused by a virus that spreads rapidly from person to person and may result in serious illness or death, constitutes a clear and present threat to the lives, health, welfare, and safety of the people of St. Lucie County, and

2. On March 1, 2020, Governor DeSantis declared a Public Health Emergency because of COVID-19; and, on March 9, 2020, Governor DeSantis issued Executive Order 20-52, declaring a State of Emergency because of COVID-19; and

3. On March 11, 2020, the World Health Organization declared the spread of COVID-19 to be a global pandemic; and on March 13, 2020, President Trump declared a national emergency concerning COVID-19; and

4. The St. Lucie County Public Safety Director declared a local state of emergency in St. Lucie County based on the COVID-19 virus on March 17, 2020; and

5. 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 (about two arms lengths); and

6. 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

7. The CDC recommends wearing cloth face coverings in public settings where other social distancing measures are difficult to maintain in order 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

8. 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

9. 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

10. 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

11. 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

12. 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

who may be shedding the virus, when the virus replicates in infected persons to spread it to other individuals; and

13. Researchers at the University of Florida believe it is too early to ease restrictions without enhanced testing in place and that such testing is not currently in place and that COVID-19 will be present in the population for a long time[1]; and

14. According to the Department of Health, local testing has been underutilized and the number of individuals tested needs to increase and contact tracing must increase as well; and

15. 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

16. Executive Order 20-112 does not preempt the authority of local governments to add additional restrictions to businesses opened by the Governor; and

17. 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

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[1] https://mediasite.video.ufl.edu/Mediasite/Play/b8849c7ddb114f2db5fcc0be6a4ec0b41d;

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 I); and

18. Alachua County issued Emergency Order 2020-21 requiring face masks in certain circumstances. The County's Emergency Order was challenged in 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 second-guessing"); and

19. 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

20. 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

21. Based on recent information and data from the St. Lucie County Department of Health, the number of confirmed cases of COVID-19 in St. Lucie County has increased significantly since additional re-openings were authorized under Phase 2 of the Governor's Plan for Florida's Recovery; and

22. Based on advice from medical professionals, the number of confirmed cases of COVID-19 in St. Lucie County will increase exponentially if additional measures to stop or slow the spread of COVID-19 are not instituted; and

23. 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

24. 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

25. 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

26. 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 St. Lucie County; and

27. On June 26, 2020, the St. Lucie County Administrator issued Emergency Order No. 20-044 requiring the wearing of face coverings in County buildings; it is the intent of this Ordinance to supplement but not supersede Emergency Order No. 20-044; and

28. In determining whether to issue 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.

29. A special meeting of the Board was scheduled for July 1, 2020, for the single purpose of discussing the recent increase in COVID-19 cases in the County and to consider additional mitigation requirements to be imposed countywide and the Board heard extensive comments from the public and County staff regarding this Ordinance.

30. 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.

31. The Board unanimously determined that an emergency exists, and the immediate enactment of this Emergency Ordinance is necessary as authorized in Section 125.66(3), Florida Statutes.

32. The Board finds 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 BOARD OF COUNTY COMMISSIONERS OF ST. LUCIE COUNTY, FLORIDA, that:

Section 1. Incorporation of Recitals as Legislative Findings.

The recitals of this Emergency Ordinance are incorporated herein and constitute the legislative finds of the Board. The recitals are made fully a part of this Emergency Ordinance as

if the recitals were set out in a section hereunder.

Section 2. Mandatory Requirements.

All natural persons within incorporated and unincorporated St. Lucie County working in restaurants including servers and those engaged in food preparation, grocery stores, food service, salons, gyms, any retail establishments, or businesses open to the public or any other locations visited by the public where social distancing is difficult to maintain shall wear face coverings. All restaurants, grocery stores, food service, salons, gyms, any retail establishments or businesses open to the public or any other location visited by the public where social distancing is not possible within incorporated and unincorporated St. Lucie County shall require workers to wear face coverings unless covered by an exception to this Ordinance. Natural persons in outdoor public places who are maintaining social distancing are not required to wear facial coverings. Nothing in this Ordinance prohibits businesses or retail establishments from requiring that members of the public wear a facial covering in such business or retail establishment.

Section 3. Definitions.

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. Medical and surgical masks, such as N-95 masks or other similar medical surgical masks, should be reserved for health care personnel, police, fire fighters, emergency management and other first responders engaged in life/safety activities.

A "business" or "retail establishment" means a location under which any business is conducted, goods are made and stored or processed or where services are rendered.

Section 4. Exceptions.

A face covering shall not be required for the following persons:

A. Persons for whom a face covering would cause impairment due to an existing health condition or disability; and
B. Persons working in a business or profession except for food service or preparation who do not have interactions with other persons; and
C. Persons working in a business or profession who maintain social distancing from another person;
D. 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
E. Persons exercising, while maintaining social distancing; and
F. Persons while eating or drinking; and
G. 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
H. 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.
I. Persons for whom wearing facial covering is subject to a religious objection.

Section 5. 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 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 citation, the individual or business will be asked to comply with the Emergency Ordinance or be able to explain how an exception in Section 4 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.

2) The penalty for a violation of this Emergency Ordinance is:
    a) For a first offense, a fine of $25.00.
    b) For a second offense, a fine of $62.50.
    c) For a third and each subsequent offense, a fine of $125.00.
    d) All other remedies available at law or equity, including injunction, remain available to the County, even after issuance of a citation.

Section 6. Applicability, Expiration and Conflict.

This Emergency Ordinance shall apply countywide and establish minimum standards. The ordinance shall not apply to internal operations of municipal governments, the School District, the State University System, the State College System, the State of Florida, or Federal agencies, and public utilities who are encouraged to adopt rules and procedures regarding the face covering requirement. This Ordinance shall expire upon the expiration of the State of Local Emergency or sooner if the Board determines to repeal the Ordinance. All County ordinances or parts of ordinances in conflict with this Emergency Ordinance are hereby repealed to the extent of said conflict.

Section 7. 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 8. Filing with the Department of State.

The Clerk is hereby directed forthwith to send a certified copy of this ordinance by email to the Bureau of Administrative Code and Laws, Department of State, The Capitol,

Tallahassee, Florida 32304.

Section 9. Effective Date.

As provided in Section 125.66(3), Florida Statutes, this Emergency Ordinance shall be deemed to be filed and shall take effect when a copy of this Ordinance has been accepted and confirmed by the Department of State by email. The requirements of Section 2 shall take effect at 8:00 a.m. on Tuesday, July 7, 2020.

Section 10. Adoption.

The waiver of the notice for the consideration of the Emergency Ordinance and the adoption of the Emergency Ordinance itself was by a 4/5 vote of the Board of County Commissioners of St. Lucie County, Florida, during a duly declared local state of emergency due to the COVID-19 pandemic, on this 1st day of July, 2020.

After motion and second, the vote on this ordinance was as follows:

Chair Cathy Townsend	NAY
Vice Chair Chris Dzadovsky	AYE
Commissioner Sean Mitchell	AYE
Commissioner Linda Bartz	AYE
Commissioner Frannie Hutchinson	AYE

Section 11. Codification.

Provisions of this ordinance shall be incorporated in the Code of Ordinances of St. Lucie County, Florida, and the word "ordinance" may be changed to "section", "article", or other appropriate word, and the sections of this ordinance may be renumbered or relettered to accomplish such intention; provided, however, that Sections 5 through 11 shall not be codified.

PASSED AND DULY ADOPTED this 1st day of July, 2020.

ATTEST:

DEPUTY CLERK

BOARD OF COUNTY COMMISSIONERS
ST. LUCIE COUNTY, FLORIDA

BY: _____
VICE CHAIR

APPROVED AS TO FORM AND CORRECTNESS:

BY: _____
COUNTY ATTORNEY