ORDINANCE NO. 2020-55

AN EMERGENCY ORDINANCE OF THE CITY OF OCALA, FLORIDA, REQUIRING PROPRIETORS OF BUSINESS ESTABLISHMENTS TO POST SIGNAGE, MAKE ANNOUNCEMENTS, AND REQUIRE NON-EXEMPT EMPLOYEES TO WEAR FACE COVERINGS IN ORDER TO CONTROL THE SPREAD OF COVID-19; PROVIDING FOR PENALTIES AND ENFORCEMENT; REPEALING AND REPLACING ORDINANCE NO. 2020-47; PROVIDING FOR APPLICABILITY AND CONFLICT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS:

A. Pursuant to §166.041(3)(b), Florida Statutes, and Section 2.14 of the City Charter, the City Council ("Council") of the City of Ocala, Florida ("City") is granted the authority to adopt emergency ordinances to promote life, health, property or public peace.

B. On March 30, 2020, Council declared a State of Local Emergency resulting from the outbreak of the Coronavirus Disease 2019 (COVID-19).

C. Council shares the desire to protect the public health, welfare, and safety due to the threat of COVID-19 through measures such as those set forth in Executive Orders and guidance issued by the Governor of the State of Florida and President of the United States in a manner that does not place an excessive burden on individuals, commercial establishments and small businesses operating within the City.

D. COVID-19 is spread through airborne transmission from individuals sneezing, speaking, and coughing, from which infectious droplet nuclei can spread for a great distance.

E. 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.

F. To reduce the spread of 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.

G. 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.

H. On June 30, 2020, Coronavirus Task Force member Dr. Anthony Fauci provided 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.

I. The re-opening of the State in general, and the City of Ocala 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.

J. Despite mitigation efforts, the number of confirmed cases of COVID-19 has been spiking both in Florida and in Marion County, and although there is increased testing, the positivity rate has also been trending higher, indicating increased spread and transmission of the disease.

K. 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 transmission is likely.

L. 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.

M. Free face coverings are available to the public at various locations in the City of Ocala and throughout Marion County.

N. Adopting face covering requirements via ordinance, as opposed to local emergency powers, permits enforcement through civil citations and fines instead of criminal prosecution as a second-degree misdemeanor.

O. On August 12, 2020, Council determined that an emergency exists, overriding a mayoral veto and adopting Emergency Ordinance 2020-47, which was intended to mitigate the continued spread of COVID-19.

P. Council now desires to repeal and replace Emergency Ordinance 2020-47 as set forth herein.

Q. The upcoming regular Council meetings do not provide adequate time to adopt this Ordinance under the ordinary adoption process.

R. Council hereby waives notice of intent to consider this Ordinance.

NOW THEREFORE BE IT ORDAINED by the City Council of the City of Ocala, Florida as follows:

Section 1. ***Legislative Findings and Intent.*** The above stated recitals to this Ordinance are hereby incorporated into this Ordinance and serve as the legislative intent supporting this Ordinance.

Section 2. ***Emergency Enactment.*** Pursuant to State law and the City's Charter, and based on the legislative findings set forth herein, it is declared that an emergency exists requiring immediate action by the Council.

Section 3. ***Definitions.***

(a) 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.htm.1.

(b) Business Establishment. A "business establishment" means a 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' includes a location where the City of Ocala conducts business or a "lodging establishment," but does not include a place of worship, a polling place or

polling room, or a location where a governmental entity other than the City of Ocala conduct business.

(c) 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.

(d) Proprietor. A "proprietor" means a person or business entity owning, leasing or otherwise in possession of a business establishment open to customers or members of the public.

Section 4. ***Mandatory Requirements.***

(a) Each proprietor of a business establishment located within the corporate limits of the City must:

(1) Post signage on the business establishment's entry door or front façade requesting each person inside its business establishment to wear a face covering;

(2) If a business establishment has a public address system, periodically request that each person inside its business establishment wear a face covering over such public address system; and

(3) Require each employee who is not exempt from such requirement under subsection (4)(b) of this Emergency Ordinance to wear a face covering while inside the business establishment.

(b) Notwithstanding the foregoing, the following persons are not required to wear face covering:

(1) Children under the age of seven (7) years of age.

(2) 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.

(3) Law enforcement, public safety, fire, and other life safety and health care personnel, as their personal protective equipment requirements will be governed by their respective agencies.

(4) Persons exercising religious beliefs or practices conflicting with the wearing of a facial covering.

(5) Persons physically exercising while observing at least 6 feet of distancing from another person.

(6) Restaurant, bar or theatre 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.

(7) 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 is maintained 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.

(8) Medical, dental or other health care facilities or offices.

(9) 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.

(10) A person in a lodging establishment who is inside a lodging unit, including but not limited to, a hotel room, motel room, vacation rental unit, timeshare unit, or similar unit.

(c) A person who is not wearing a face covering shall not be required to provide documentation or otherwise prove that he or she qualifies for one of the foregoing exemptions.

(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.

(e) Nothing set forth herein shall prohibit the proprietor of any business from requiring a person entering or inside its business establishment to wear a face covering, or require the proprietor to do so.

Section 5. ***Penalties and Enforcement.***

(a) It is the intent of the City to seek voluntary compliance with the provisions contained herein and to educate and warn of the dangers of non-compliance. Prior to the issuance of penalties as provided in subsection 5(c) of this Emergency Ordinance, the alleged violator shall be given an opportunity to voluntarily comply with the provisions of this Emergency Ordinance. In the event voluntary compliance is not achieved, then violation of this Emergency Ordinance, and any order issued pursuant hereto, shall be subject to the penalties as provided in subsection 5(c) of this Emergency Ordinance, or as otherwise provided by law.

(b) 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.

(c) The Proprietor of a business establishment is subject to the following penalties for the violation of this Emergency Ordinance:

(1) For a first offense, a verbal warning that includes education about the dangers of non-compliance.

(2) For a second offense, a written warning.

(3) For a third and all subsequent offenses, a fine of $25.00.

(4) All other remedies available at law or equity, including injunction, remain available to the City, even after issuance of a citation.

Section 6. ***Applicability and Conflict.*** This Emergency Ordinance repeals and replaces Ordinance 2020-47 and shall apply throughout the corporate limits of the City of Ocala. In the event that any provision in 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 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. ***Effective Date; Term.*** To the extent such approval is required under the City charter, this Emergency Ordinance shall take effect upon approval by the Mayor, or upon becoming law without such approval, and shall remain in effect until the earlier of the date on which any of the following occurs:

(a) The state of emergency related to COVID-19 declared by the Governor of Florida expires;

(b) The state of local emergency related to COVID-19 declared by the City of Ocala expires;

(c) The City Council specifically rescinds this Emergency Ordinance; or

(d) Upon its automatic repeal at t 12:01 a.m. on the sixty-first day following the date on which it was adopted, pursuant to Section 2.14 of the City Charter.

PASSED AND ADOPTED by the City Council of the City of Ocala, Florida, through emergency enactment procedures authorized by Section 166.041(3)(b), Florida Statutes, on this 18th day of August, 2020.

	YES	**NO**
Council President Jay Musleh	X	
Councilman Pro-Tem Justin Grabelle	X	
Councilman Matthew Wardell	X	
Councilman Brent Malever	X	
Councilman Ire Bethea	X	

ATTEST:

By: Angel B. Jacobs
Angel B. Jacobs
City Clerk

CITY OF OCALA

By: Jay A Musleh
Jay A. Musleh
President, Ocala City Council

Approved/Denied by me as Mayor of the City of Ocala, Florida, on 8/24, 2020.

By: Reuben Kent Guinn
Reuben Kent Guinn
Mayor

Approved as to form and legality:

Robert W. Batsel, Jr.
Assistant City Attorney

Ordinance No: 2020-55
Adopted: 8/18/2020

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