

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA,  
AMENDING CHAPTER 42 OF THE CODE OF  
ORDINANCES, TITLED "MISCELLANEOUS OFFENSES"  
BY ADDING SECTION 42-19 TITLED "FACE  
COVERINGS" TO MANDATE THAT INDIVIDUALS WEAR A  
FACE COVERING IN PUBLIC; PROVIDING FOR  
SEVERABILITY; PROVIDING FOR REPEAL OF  
INCONSISTENT PROVISIONS; PROVIDING FOR AN  
EFFECTIVE DATE**

WHEREAS, the City of Key West finds that Coronavirus Disease 2019 (COVID-19) presents a danger to the health, safety, and welfare of the public; and

WHEREAS, the Centers for Disease Control (CDC) advises that the virus that causes COVID-19 is thought to spread mainly from person to person, mainly 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. Spread is more likely when people are in close contact with one another (within about 6 feet); and

WHEREAS, the Centers for Disease Control (CDC) issued updated Guidance titled "Deciding to Go Out" where the CDC stated "[b]eing in a group with people who aren't social distancing or wearing masks increases your risk" of contracting COVID-19 and recommends keeping on hand "a mask, tissues, and a hand sanitizer with at least 60% alcohol" when venturing outside the home; 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 strongly advises that every community fully observe social distancing, wear masks, and fully adhere to the sanitation requirements stated in the CDC Guidelines in order to minimize the risk of a dramatic increase in infections that might overwhelm the available public health resources and require closure of amenities and businesses; and

WHEREAS, the State Health Officer and Surgeon General has issued a Declaration of Public Health Emergency, stating that COVID-19 is a threat to public health in Florida; and

WHEREAS, the State Health Officer and Surgeon General has issued a Public Health Advisory stating "[a]ll individuals should wear face coverings in any setting where social distancing is not possible", and that "[a]ll individuals should follow CDC guidelines on what type of face coverings are available and should be utilized"; and

WHEREAS, the City of Key West finds that it is in the best interest of public health, safety and welfare of the residents, workers and employees of the City of Key West to require face

coverings be worn to slow the spread of COVID-19; and

WHEREAS, the City of Key West finds the inconvenience of an ordinance requiring the use of face coverings or other suitable face coverings is minimal compared to the risk to the health, safety, and welfare of the community were no such rule imposed; and

WHEREAS, the City of Key West finds implementation of this ordinance is necessary for the preservation of the health, safety, and welfare of the community; and

WHEREAS, it is necessary and appropriate to take action to ensure that COVID-19 remains controlled, and that the residents, workers, and visitors in the City of Key West remain safe and secure and that this ordinance promotes business operation and economic recovery while maintaining focus on core safety principals and slowing the spread of COVID-19 within the City of Key West; and

WHEREAS, the State of Florida has not preempted local governments from regulating in the field of minimum health requirements with respect to COVID-19; and

WHEREAS, the Mayor and the Manager of the City of Key West have issued emergency directives requiring the use of face coverings pursuant to § 252.46, Fla. Stat., that are enforceable as misdemeanors by law enforcement though F.S. 252.47 and F.S. 252.50; and

WHEREAS, the City of Key West remains under a State of Local Emergency, adopting regulations via ordinance would permit additional enforcement options and impose additional requirements for establishments within the City of Key West that fail to comply with the established guidelines; and

WHEREAS, 28 C.F.R. 36.208, the implementing regulations for the Americans with Disabilities Act states that the ADA does not require a public accommodation to permit an individual to participate in or benefit from the goods, services, facilities, privileges, advantages and accommodations of that public accommodation when that individual poses a direct threat to the health or safety of others; and customers with disabilities who may be unable, due to their disability, to wear a face mask may access the goods and services of the businesses through the provisions of curbside service or home delivery; and

WHEREAS, the Third District Court of Appeal has defined the term business establishment for purposes of tort liability to mean "a location where business is conducted, goods are made or stored or processed or where services are rendered." *Publix Supermarkets, Inc. v. Santos*, 118 So.3d 317 (Fla. 3d DCA 2013); and

WHEREAS, the Florida Legislature has defined the term "transient public lodging establishment" to mean "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 a period 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." See, F.S. 509.013(4)(a)(1); and

WHEREAS, the City of Key West finds it necessary to amend Chapter 42 of the Code of Ordinances to protect the health, safety and welfare of the public; and

WHEREAS, an amendment to Chapter 42 of the Code of Ordinances, creating section 42-19, will promote the health, safety and welfare of the citizens and visitors of the City of Key West.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF KEY WEST,  
FLORIDA:**

**Section 1:**        **Findings.** The above recitals are adopted by the City Commission as legislative findings.

**Section 2:**        That the Code of Ordinances of the City of Key West, Florida, is hereby amended by adding a section, to be numbered 42-19, which reads as follows\*:

**Sec. 42-19. - Face Coverings.**

(A)        Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Face Covering(s) shall mean a material that covers the nose and mouth and may include a face mask, homemade mask, or other cloth covering, such as a scarf, bandana, handkerchief or other similar cloth covering. Face covering shall not include the use of face shields.

Social Distancing shall mean keeping space between yourself and other persons by staying a minimum of 6 feet away from other person(s).

Business Establishment is defined as a location where business is conducted, goods are made or stored or processed or where services are rendered. The term "business establishment" shall also include locations where non-profit, governmental, and quasi-governmental entities facilitate public interactions and conduct business. The definition shall include the entire premises of the business establishment, whether owned or leased, or indoors or outdoors.

Lodging Establishment shall have the same meaning as the term "transient public lodging establishment" as defined in § 509.013(4) (a) (1), Fla. Stat. (2019). A lodging establishment is a type of business establishment and any reference to business establishment shall include a lodging establishment.

Operator shall mean any individual or entity that owns a business or that controls the operation of a business, even if only for a period of time, regardless of the formal title or role held by that individual or entity.

(B) Face Covering Requirements.

(1) All persons over the age of six (6) while physically located within the City of Key West, and who are away from their residence, shall carry a face covering capable of immediate use.

(2) Every person over the age of six (6), while physically located within the City of Key West, and who is away from their residence, shall wear a face covering at all times, regardless of whether social distancing is also maintained.

(3) The operator and/or employee of a business establishment shall ensure that every individual in that establishment complies with this section.

(C) Face Covering Exceptions. However, the requirements of subsection (B), above, are subject to the following exceptions:

(1) A lodging establishment guest(s) while inside the lodging unit including a hotel room, motel room, vacation rental unit, timeshare unit, or similar unit.

(2) Public safety, fire, law enforcement, and other life safety personnel, as their personal protective equipment requirements will be governed by their respective agencies, which shall include facial coverings for City of Key West personnel;

(3) Restaurant patrons who are seated at a table and eating and/or seated at a table and drinking. Persons who are not seated and are on the premises of a business establishment, whether indoors or outdoors, shall wear a face covering at all times.

(4) If Bars are authorized to operate, Bar patrons who are seated and eating and/or seated and drinking. Persons who are not seated and are on the premises of a business establishment, whether indoors or outdoors, shall wear a face covering at all times.

(5) Patrons or clients of Barbershops or Cosmetology Salons, who are seated, when wearing a face covering would reasonably interfere with receiving services. Persons who are not seated and are on the premises of a business establishment, whether indoors or outdoors, shall wear a face covering at all times.

(6) Face coverings are not required while a person is in a private, non-commercial enclosed vehicle or private, non-commercial vessel.

(7) These requirements do not apply within a workplace area not otherwise open to the public while a person is complying with engineering, administrative, and work practice controls and/or personal protective equipment (PPE) requirements, developed in accordance with the United States Occupational Safety and Health Administration (OSHA) mitigation and contingency planning document entitled "Guidance for Preparing Workplaces for COVID-19" (as it may be amended, supplemented, or superseded from time to time).

(8) Participants in public meetings held pursuant to F.S. 286.011, provided that the participant without a face covering is engaged in social distancing and separated from others by a hard-surface partition.

(9) A couple exchanging vows in a ceremony are exempted from the face coverings requirement only while they are exchanging vows and/or posing for wedding photographs

associated with the ceremony.

(10) Musicians and entertainers when separated from patrons and other employees by at least 10 feet and by a hard-surface partition with a minimum size of 4' x 8' that separates the musicians and entertainers from the audience and prevents the spread of respiratory droplets.

(11) Individuals engaged in strenuous exercise in groups of no more than two (2) persons provided there is a minimum of six (6) feet from the nearest individual or group. Strenuous exercise shall mean intense and challenging activity which is typically associated with an increased heart rate and shall not include walking.

(D) Penalties and Enforcement. This ordinance may be enforced in the following manner:

(1) Civil Citation.

(a) A code compliance or law enforcement officer may, upon observation of a violation by a person who does not immediately put on a face covering after receiving a verbal warning, issue a notice to appear or civil citation to appear in County Court.

(b) A code compliance or law enforcement officer may, upon observation of a violation of any provision of this ordinance, by an operator or employee of a business establishment, issue a notice to appear or civil citation to appear in County Court.

(c) Any person or business establishment prosecuted under this subsection and found in violation of this ordinance may be punished by a fine of up to \$500.00. The following schedule is applicable if the citation is paid within ten (10) days of issuance: \$250.00 for the first violation; \$350.00 for the second violation; \$450.00 for a third or subsequent violation.

(2) Administrative Notice of Violation

(a) A code compliance officer may, upon observation of a violation by a person who does not immediately put on a face covering after receiving a verbal warning, issue a notice of violation and notice to appear before the special magistrate.

(b) A code compliance officer may, upon observation of a violation of any provision of this



ordinance, issue a notice of violation and notice to appear before the special magistrate.

(c) Any person or business establishment found in violation of this ordinance may be fined pursuant to part I of chapter 162, Florida Statutes.

(3) Criminal.

(a) A law enforcement officer may arrest or issue a notice to appear for any knowing and intentional violation(s) of this ordinance committed in his or her presence or through procurement of an arrest warrant. Violations may be prosecuted by the State Attorney of the 16th Judicial Circuit, or an Attorney for the City of Key West.

(b) A person found in violation may be punished by up to 60 days in the County jail and/or a fine of up to \$500.00.

(4) Injunctive relief. This Ordinance may be enforced through injunctive relief through a complaint for injunctive relief in Circuit Court seeking to enjoin violations that occur within the City of Key West.

(5) Defenses.

(a) An owner, operator, agent, manager, and/or employee (collectively "operator/employee") of a business establishment shall not be liable in any enforcement action taken under this section for the violations of a guest, customer, and/or patron if that operator/employee directed that guest, customer, and/or patron, who refuses to comply with the provisions of this Ordinance, to vacate the premises or face a trespass warning or prosecution of trespass.

(b) An individual shall not be subject to penalties for violation of Section 3(a) and Section 3(b) of this ordinance if the individual suffers from a previously diagnosed chronic medical condition that prohibits the individual from wearing a face covering as defined in this ordinance.

(E) Business Establishments. In addition to the face covering requirements of this Ordinance, all Business

Establishments which are operating within the City of Key West, may continue to operate provided that each establishment complies with the face covering requirements in this Ordinance; the City of Key West's Emergency Directives and Ordinances and any and all Orders from the State of Florida and/or its agencies, as applicable, and consents to entry of City of Key West personnel onto the establishment's property for the sole purpose of inspection for compliance with this Ordinance.

(1) In addition to being subject to the penalties set forth in section (D) of this ordinance, effective immediately, any business establishment that is cited by code compliance or law enforcement authority for a second or subsequent violation for operating in a manner inconsistent with or otherwise in violation of this ordinance shall close immediately ("Closure").

(a) Upon issuance of a citation for a second or subsequent violation of this ordinance and upon written request from the establishment to the city manager or his designee, the city manager shall conduct a hearing, as applicable. The establishment shall be afforded due process. The city manager may impose a suspension as follows:

- i. Second violation: Up to 24 hours' suspension.
- ii. Third violation: Up to 10 days' suspension.
- iii. Fourth or subsequent violation: Up to 30 days' suspension for each violation.

(b) Before reaching any decision under subsection (a) of this section, the city manager shall:

- i. Afford the establishment a reasonable opportunity to be heard.
- ii. Consider the establishment's past record of compliance with this ordinance, the City of Key West's Emergency Directives and Ordinances and any and all Orders from the State of Florida and/or its agencies, as applicable and with the entire Code.
- iii. Consider the seriousness of the violation.

(c) The city manager's decision to suspend the establishment's operations shall be submitted in

writing to the representative of the establishment.

- (d) The establishment has a right to appeal the city manager's decision to the city commission by filing a written appeal with the city clerk within ten days of receipt of the notice. No establishment shall reopen while it is suspended. The city manager or his designee may post the exterior of the property notifying the public of the violation hereunder. An appeal to the city commission shall be in accordance with the procedural elements set out in Sec. 90-431(1)-(6), Code of Ordinances, City of Key West.

(2) Before reopening after a closure pursuant to section (E)(1), the owner or authorized agent/operator or Chief Executive Officer (CEO) must comply with all of the following conditions:

(a) Keep the establishment closed after it is cited pursuant to the time periods in subsection (E)(1)(A) during which the establishment shall conduct a thorough review of the City of Key West's applicable Emergency Directives and ordinances and the State of Florida's and its agencies' applicable Orders, and all attachments thereto, and take all necessary measures to bring the establishment into compliance with the requirements in the Emergency Directives, ordinances and/or Orders;

(b) Submit a fully executed attestation under penalty of perjury by the owner, agent/operator, or CEO of the establishment, in the form provided by the City Manager and/or his or her agent, to the City of Key West by email to sdsmith@cityofkeywest-fl.gov, attesting that the review has been completed and the required measures have been taken;

(c) Receipt of the City of Key West's acknowledgment of a valid executed attestation form;

(d) The business establishment shall, within (5) calendar days after reopening, submit to inspection and be inspected by local code enforcement or law enforcement authorities for the sole purpose of confirming the violation(s) have been corrected; and

(e) The business establishment shall keep a copy of the executed attestation readily available on its premises and shall exhibit same upon request by City of Key West personnel.

(3) In addition to being subject to the penalties set forth in section (D) of this ordinance, any repeat violation by the business establishment cited by the applicable code

enforcement or law enforcement authority shall be presumed a knowing violation subject to a fine of two thousand five hundred dollars (\$2,500.00) for the first closure and the fine will increase from two thousand five hundred dollars (\$2,500.00) to five thousand dollars(\$5,000.00) for each violation for the second or subsequent closure.

(4) Any reopening in violation of this section, including prior to the City's written acknowledgement of a valid executed attestation, shall be a separate violation for each day of operation.

(F) Sunset Date. Unless repealed, rescinded or extended, this ordinance shall automatically stand repealed on March 3, 2021. However, this ordinance may be extended by resolution for a maximum of six (6) additional months.

**Section 3: Opt-Out Notification.** The City Commission of Key West hereby notifies Monroe County that the City of Key West has opted-out of the Face Coverings in Certain Circumstances Ordinance also known as Monroe County Ordinance No. 026-2020. The City Clerk shall send a true and correct copy of the Ordinance to the Monroe County Board of County Commissioners.

**Section 4: Severability.** If any section, provision, clause, phrase, or application of this Ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, the remaining provisions of this Ordinance shall be deemed severable therefrom and shall be construed as reasonable and necessary to achieve the lawful purposes of this Ordinance.

**Section 5: Conflict.** All ordinances, directives or parts

thereof in conflict with the provisions of this Ordinance are hereby superseded to the extent of such conflict.

**Section 6:**    **Effective Date.** This Ordinance shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

**Section 7:**    Uncodified Emergency Ordinance 20-07 and Uncodified Emergency Ordinance 20-08, amending Emergency Ordinance 20-07, are hereby repealed upon enactment of this Ordinance.

Read and passed on first reading at a regular meeting held  
this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

Read and passed on final reading at a regular meeting held  
this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

Authenticated by the presiding officer and Clerk of the  
Commission on \_\_\_\_\_ day of \_\_\_\_\_, 2020.

Filed with the Clerk \_\_\_\_\_, 2020.

Mayor Teri Johnston	_____
Vice Mayor Sam Kaufman	_____
Commissioner Gregory Davila	_____
Commissioner Mary Lou Hoover	_____
Commissioner Clayton Lopez	_____
Commissioner Billy Wardlow	_____
Commissioner Jimmy Weekley	_____

\_\_\_\_\_  
TERI JOHNSTON, MAYOR

ATTEST:

\_\_\_\_\_  
CHERYL SMITH, CITY CLERK