

ORDINANCE NO. _____

AN UNCODIFIED ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING ORDINANCE 20-08 TO MANDATE THAT INDIVIDUALS WEAR A FACE COVERING IN PUBLIC WITH CERTAIN EXCEPTIONS; DECLARING THIS ORDINANCE TO BE AN EMERGENCY MEASURE; PROVIDING FOR PENALTIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE AND SUNSET DATE.

WHEREAS, the City of Key West finds that it is necessary to amend Emergency Ordinance 20-08; and

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) issued updated Guidance titled "Venturing Out? Be Prepared and Stay Safe" where the CDC stated "[b]eing in a group with people who aren't social distancing or wearing cloth face coverings" increases your risk" of contracting COVID-19; and which recommends keeping on hand "a cloth face covering, tissues, and a hand sanitizer with at least 60% alcohol" when venturing out, 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 facial coverings, 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, direct evidence has demonstrated the effectiveness of widespread community use of face masks in states whose governments implemented face mask mandates and that these states have fared better with a greater decline in daily COVID-19 growth rates when compared to states that did not implement face mask use.¹

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

¹ Lyu, W, Wehby, G. Community use of face masks and COVID-19: Evidence from a natural experiment of state mandates in the US. Health Affairs 39, No. 8(2020):1419-1425. Available from: <https://www.healthaffairs.org/doi/10.1377/hlthaff.2020.00818>.

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;

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; 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, on June 26, 2020, the City of Key West adopted Emergency Ordinance 20-07 which requires individuals to use facial coverings as defined in the ordinance with enumerated exceptions, penalties and enforcement mechanisms; and

WHEREAS, on July 21, 2020, the City of Key West adopted Emergency Ordinance 20-08, thereby amending Emergency Ordinance 20-07, which requires individuals to use facial coverings as defined in the ordinance with enumerated exceptions, penalties and enforcement mechanisms; and

WHEREAS, the number of infections has remained steady and at a lower rate than at its peak in July since adoption of the face coverings ordinance; and

WHEREAS, the City of Key West desires to incorporate additional exceptions into its ordinance at the request of residents and certain businesses of the City of Key West so as to authorize additional enforcement mechanisms unavailable for enforcing an emergency directive; and

WHEREAS, the Florida Legislatures has stated that

"[s]afeguarding the life and property of its citizens is an innate responsibility of the governing body of each political subdivision of the state" such as Monroe County and its five municipalities; F.S. 252.38.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF KEY WEST, FLORIDA, THAT UNCODIFIED EMERGENCY ORDINANCE 20-08 IS HEREBY AMENDED AS FOLLOWS:

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

Section 2: **Definitions.** For purposes of this ordinance, the following terms are defined as follows:

- (a) "*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.
- (b) "*Social Distancing*" shall mean keeping space between yourself and other persons by staying a minimum of 6 feet away from other person(s).
- (c) "*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.
- (d) "*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.
- (e) "*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.

Section 3: Face Coverings requirements.

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

Section 4: Face Covering Exceptions. However, the requirements of section 3 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.
- (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 following 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 appropriately separates ~~the parties~~ the musicians and entertainers from the audience and prevents the spread of respiratory droplets.
- (11) Patrons of gyms while engaged in strenuous physical activity provided social distancing is maintained at all times.

*(Coding: Added language is underlined; deleted language is struck through at reading. Language added after publishing of agenda is double underlined and double struck through at reading.)

(12) Individuals who are outdoors and not on the premises of a business provided social distancing is maintained at all times.

(13) The City Commission of Key West encourages Monroe County School District in conjunction with the Department of Health to develop policies regarding face covering use with regards to its students, teachers, and employees and leaves any implementation of such policies to the discretion of the Monroe County School District.

Section 5: **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.

- ~~(a) Complies with the City of Key West's Emergency Directives, as applicable, and the attachments thereto, and any and all Executive Orders from the State of Florida, as applicable, and the attachments thereto; and~~
- ~~(b) Complies with the face coverings requirements of section 3 of this ordinance; and~~
- ~~(c) 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.~~
- ~~(d)~~ (a) In addition to being subject to the penalties set

forth in section 6 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") ~~pursuant to the issuance of an Emergency Directive executed by the Mayor, Mayor Pro Tem, Emergency Management Director, or City Manager, and may only reopen after:~~

(1) 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.

(2) Before reaching any decision under subsection (1) 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.

(3) The city manager's decision to suspend the establishment's operations shall be submitted in writing to the representative of the establishment.

(4) 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.

(b) Before reopening after a closure pursuant to section (5) (a), the owner or authorized agent/operator or Chief Executive Officer (CEO) must comply with all of the following conditions:

(1) Keep the establishment closed after it is cited pursuant to the time periods in section (5) (a) A minimum of a twenty-four (24) hour period during which the establishment shall conduct a thorough review of the City of Key West's applicable Emergency Directives and ~~this ordinance~~ ordinances and the State of Florida's and its agencies' applicable Executive Orders, and all applicable attachments thereto, and take all necessary measures to bring the establishment into compliance with the requirements in ~~of such the~~ Emergency Directives, ordinances and/or Executive Orders; and

(2) Submitting a fully executed attestation under penalty of perjury by the owner, agent/operator, or ~~chief executive officer~~ CEO of the establishment, in the form ~~attached hereto~~ provided by the City Manager and/or his or her designee, 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,; and

(2) ~~(3)~~ Receipt of the City of Key West's acknowledgment of a valid executed attestation form; and

(4) 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

(5) 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.

~~(c) In addition to being subject to the penalties set forth in section 6 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.~~

~~(f) If a business establishment is closed a second or subsequent time pursuant to Section 5(d) of this ordinance, the required minimum closure period for each subsequent closure will increase from twenty four (24) hours to ten (10) days and the fine will increase from two thousand five hundred dollars (\$2,500.00) to (\$5,000.00).~~

~~(g)~~(c) 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.

Section 6: Penalties and Enforcement. This ordinance may

be enforced in the following manner:

(a) Civil Citation.

(1) 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.

(2) 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, after having received a verbal warning, issue a notice to appear or civil citation to appear in County Court.

(3) 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.

~~(b)~~ Administrative Notice of Violation

- ~~(1)~~ 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.
- ~~(2)~~ 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.
- ~~(3)~~ Any person or business establishment found in violation of this ordinance may be fined pursuant to part I of chapter 162, Florida Statutes.

~~(e)~~ (b) Criminal.

- (1) 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 by a person who does not immediately put on a face covering after having been previously warned. Violations may be prosecuted by the State Attorney of the 16th Judicial Circuit, or an Attorney for the City of Key West.
- (2) 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.

~~(d)~~ (c) 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.

~~(e)~~ (d) Defenses.

- (1) 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~~ ordinance 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.

(2) 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.

Section 7: Declaration of Emergency. This Ordinance is hereby declared to be an emergency measure and necessary for the immediate preservation of the general welfare, health, and safety of the general public of the City of Key West, Florida, said emergency arising from the fact that Novel Coronavirus Disease 2019 (COVID-19) is a severe acute respiratory illness that can spread among humans through respiratory transmission and causes symptoms similar to those of influenza and, in some cases, cause death, and the difficulty the City of Key West has had so far in enforcing its face covering and social distancing directives and that the City Commission is not scheduled to meet for a second regular meeting until ~~July 21~~October 6, 2020, and Emergency Ordinance 20-08 is set to expire on September 20, 2020, and the immediate need 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.

Section 8: 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. ~~014-2020~~026-2020, ~~including as amended on July 21, 2020~~. The City Clerk shall send a true and correct copy of the Ordinance to the Monroe County Board of County Commissioners.

Section 9: 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 10: Conflict. All Ordinances or parts of Ordinances of said City in conflict with the provisions of this Ordinance are hereby superseded to the extent of such conflict.

Section 11: 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 12: Sunset Date. Unless repealed or re-enacted pursuant to Ordinance 7.02, City of Key West, this emergency ordinance shall automatically stand repealed as of the sixty-first (61st) day following the date on which it was adopted.

Section 13: Codification. Due to the temporary nature of this ordinance, the City of Key West directs the Clerk to send the ordinance to the Municipal Code for publication on its website but

with instructions to not codify the ordinance within the Code of the City of Key West.

PASSED AND ADOPTED as an amended emergency ordinance at a special meeting 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