

ORDINANCE NO. 2020- 010

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA, PROVIDING FOR ADOPTION OF RECITALS; PROVIDING FOR FACE COVERING REQUIREMENTS AND EXCEPTIONS; PROVIDING FOR PENALTIES AND ENFORCEMENT; PROVIDING FOR APPLICABILITY, SEVERABILITY, CONFLICT, SUNSET DATE AND AN EFFECTIVE DATE.

WHEREAS, COVID-19, a respiratory illness caused by a virus that spreads rapidly from person to person that can cause serious illness or death, constitutes a clear and present threat to the lives, health, welfare, and safety of the people of Indian River County, and

WHEREAS, on March 1, 2020, Governor Ron DeSantis, in his capacity as Governor of the State of Florida, issued Executive Order 20-51, directing the declaration of a public health emergency and establishing the State of Florida's response to COVID-19; and

WHEREAS, on March 1, 2020, the State Surgeon General declared a public health emergency in the State of Florida; and

WHEREAS, on March 9, 2020, Governor Ron DeSantis, in his capacity as Governor of the State of Florida, issued Executive Order Number 20-52, declaring that a state of emergency exists in the State of Florida by reason of COVID-19; and

WHEREAS, on March 17, 2020, due to COVID-19, the County Administrator declared that a local state of emergency existed in all of Indian River County; and

WHEREAS, 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; 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 recommends wearing cloth face coverings in public settings where other social distancing measures are difficult to maintain in order to slow

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the spread of the virus and help people who may have the virus and do not know it from transmitting it to others; and

WHEREAS, 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

WHEREAS, 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

WHEREAS, 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

WHEREAS, 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 from spreading it to other individuals; and

WHEREAS, Governor DeSantis, on April 29, 2020, issued Executive Order 20-112 designed to ease some restrictions established by Executive Order 20-91 in the first phase of a plan to fully reopen the State; and

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

WHEREAS, 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 "(b)ecause people may be infected but asymptomatic, they may unwittingly infect others." Chief Justice Roberts also stated the 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 '(t)he safety and the health of the people' to the politically accountable officials of the States 'to guard 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, 140 S. Ct. 1613; and

WHEREAS, Alachua County issued Emergency Order 2020-21 requiring face masks in certain circumstances. The County's Emergency Order was challenged in

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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 circumstances 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 dependent 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 outweighs 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 secondguessing"); and

WHEREAS, 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

WHEREAS, on June 20, 2020, the State Surgeon General issued a Public Health Advisory providing that with certain exceptions all individuals in Florida should wear face coverings in any setting where social distancing is not possible; and

WHEREAS, the Florida Medical Association President Dr. Ronald Giffler issued a statement saying that "the Florida Medical Association, the state's largest physician organization, encourages local officials to adopt regulations requiring individuals to wear face coverings in public places" and applauded municipalities in Florida that have already adopted mandatory mask use ordinances; and

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

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WHEREAS, based on advice from medical professionals, the number of confirmed cases of COVID-19 in Indian River County will increase exponentially if additional measures to stop or slow the spread of COVID-19 are not instituted; and

WHEREAS, 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

WHEREAS, 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

WHEREAS, 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

WHEREAS, 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 Indian River County; and

WHEREAS, on June 26, 2020, the County Administrator issued Emergency Order No. 20-15 concerning face coverings; and

WHEREAS, in determining whether to enact this Ordinance, the Indian River County Board of County Commissioners 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; and

WHEREAS, on July 7, 2020, Governor Ron DeSantis issued Executive Order 20-166 extending the state of emergency declared in Executive Order 20-52, as extended by Executive Order 20-114, for an additional 60 days; and

WHEREAS, Indian River County is still under a local state of emergency due to the COVID-19 pandemic;

WHEREAS, the number of COVID-19 cases in Indian River County have increased from 1,259 cases on July 13, 2020 to 2,766 cases on August 25, 2020; and

WHEREAS, the number of deaths related to COVID-19 in Indian River County as of July 13, 2020 was 21 and 87 as of August 25, 2020; and

WHEREAS, 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; and

WHEREAS, on July 14, 2020, the Board enacted Ordinance 2020-09, which established certain face covering requirements and recommendations; and

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WHEREAS, Ordinance 2020-09 sunsets on September 15, 2020,

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA THAT:

Section 1. Recitals Adopted

Each of the recitals set forth above is hereby adopted, re-adopted and incorporated herein and adopted as the legislative findings of the Indian River County Board of County Commissioners.

Section 2. Face Coverings

1. All persons working in restaurants, grocery stores, food service, salons, gyms, any retail establishments, or businesses open to the public or any other indoor facility visited by the public shall wear face coverings.
2. All persons entering an indoor County facility including, but not limited to; the County Administration Building, libraries, iG center, fire rescue stations, etc. shall wear face coverings.
3. All persons utilizing public transit and transportation in Indian River County shall wear face coverings.
4. All other persons physically present in any public place in Indian River County are strongly encouraged to wear face coverings.
5. 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.
6. EXCEPTIONS: A face covering shall not be required for the following persons:
 - A. Persons under the age of six years;
 - B. Employees for whom a face covering would cause impairment due to an existing health condition or disability;
 - C. Persons working in a business or profession who maintain social distancing from another person or work in their personal office with no interactions from other persons;
 - 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;
 - E. Persons exercising, while maintaining social distancing;

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F. Persons eating or drinking;

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; or

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.

Section 3. 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 Ordinance is a noncriminal, civil infraction. A violation of this Ordinance does not authorize the search or arrest of an individual. Indian River County Code Inspectors and Indian River County law enforcement officers are designated to enforce this Ordinance and are authorized to issue a citation if he or she has reasonable cause to believe that a person has committed an act in violation of this Ordinance. Prior to the issuance of a citation, the individual or business will be asked to comply with the Ordinance or be able to explain how an exception in Section 2 applies to them. Failure to comply with the requirements of this 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. Any individual may contest a citation in county court and the maximum civil penalty shall not exceed \$500.

2) The penalty for a violation of this Emergency Ordinance, if uncontested, is:

a) For a first offense, a warning.

b) For a second offense, a fine of \$25.00.

c) For a third and each subsequent offense, a fine of \$50.00.

d) All other remedies available at law or equity, including injunction, but excluding incarceration, remain available to the County, even after issuance of a citation.

Section 4. Geographic Applicability.

This Ordinance shall apply throughout the unincorporated areas of Indian River County and in County buildings and facilities in the incorporated areas of Indian River County.

Section 5. Severability.

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If any part of this ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, the remainder of this ordinance shall not be affected by such holding and shall remain in full force and effect.

Section 6. Conflict. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 7. Sunset Date. This Ordinance shall sunset on November 17, 2020.

Section 8. Effective Date. This ordinance shall become effective upon adoption by the Board of County Commissioners and filing with the Department of State.

This ordinance was advertised in the Indian River Press Journal on the 23rd day of August, 2020, for a public hearing to be held on the 15th day of September, 2020, at which time it was moved for adoption by Commissioner Bob Solari, seconded by Commissioner Peter D. O'Bryan, and adopted. The vote on this ordinance was as follows:

Chairman Susan Adams	<u>AYE</u>
Vice-Chairman Joseph E. Flescher	<u>AYE</u>
Commissioner Tim Zorc	<u>AYE</u>
Commissioner Peter D. O'Bryan	<u>AYE</u>
Commissioner Bob Solari	<u>AYE</u>

The Chairman thereupon declared the ordinance duly passed and adopted this 15th day of September, 2020.

**BOARD OF COUNTY
COMMISSIONERS OF INDIAN RIVER
COUNTY, FLORIDA**

By: 

Susan Adams, Chairman

**ATTEST: Jeffrey R. Smith, Clerk
and Comptroller**

By: 

Deputy Clerk

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

BY 

DYLAN PEINGOLD
COUNTY ATTORNEY

This Ordinance was filed by email with the Department of State on the ____ day of September, 2020.