



PERSSON, COHEN & MOONEY, P.A.

ATTORNEYS AND COUNSELORS AT LAW

M E M O R A N D U M

TO: Mayor Schneier and Town Commission
FROM: Maggie Mooney, Town Attorney
CC: Tom Harmer, Town Manager
REPORT DATE: August 31, 2020
MEETING DATE: August 31, 2020
SUBJECT: **Emergency Ordinance 2020-13 (Face Covering Requirements Ordinance)**

On July 2, 2020, the Town Commission adopted Emergency Ordinance 20-10, an Emergency Face Covering Ordinance modeled on the City of Sarasota's Emergency Face Covering Ordinance. Town's Emergency Ordinance 2020-10 was enacted for a 60 day term and is scheduled to expire on August 31, 2020.

Emergency meetings and emergency ordinance adoptions are governed by Florida Statutes, the Town Charter and Town Code. The emergency ordinance adoption process, allows the Town Commission to effectively pass an ordinance on one reading and public hearing, with limited notice, when in the action of the Town Commission is required "for the immediate protection and preservation of the peace and safety, health or property of the town or its inhabitants". See Art. II, Sec. 17, Town Charter. The Town Charter also provides for the most appropriate and effective notice to be provided before holding such an emergency meeting and that the Commission hold a vote at the commencement of such meeting declaring that the meeting is "an emergency." See, Art. II, Sec. 14, Town Charter. Florida Statutes 166.041(3)(b) and the Town Charter both speak to the minimum vote that is required for the enactment of an emergency ordinance. Florida Statutes requires a 2/3 vote to enact an emergency ordinance, and the Town Charter requires an affirmative vote of at least four members on the emergency ordinance. The Town Charter and the Town's Code of Ordinances are both silent on the duration or expiration of an emergency ordinance.

Emergency Ordinance 2020-13 is before the Town Commission for consideration and is substantially similar to the regulations established by the enactment of Emergency Ordinance 2020-10 on July 2, 2020. However, there are

a few minor modifications that have been incorporated into Emergency Ordinance 2020-13. A summary of those revisions are as follows:

- A new introductory, recital paragraph (Section 1) was added to Emergency Ordinance 2020-13, and the remaining paragraphs were renumbered based upon that addition. The inclusion of this paragraph is consistent with the standard ordinance adoption practice within the Town.
- New language was added to the introductory paragraph in Section 2 to clarify the relationship between this Emergency Ordinance 2020-13 and prior Emergency Ordinance 2020-10. The intention as stated in this paragraph is to provide for uninterrupted face covering regulations for an additional 90 days within the Town of Longboat Key during the ongoing COVID-19 threat to prevent the spread of the virus.
- Two (2) new exceptions were added to Section 2, Paragraph (C), subsections 15 and 16. Specifically, the exceptions recognize the Supervisors of Election's purview to regulate election activities during "in person" voting activities. These two (2) subsection now clearly provide that the representatives of the County Supervisor of Elections performing election activities are subject to the Supervisor of Elections' requirements for face coverings; and Town residents conducting "in person" voting activities during a general election are also subject to the Supervisor of Elections' regulations.
- Section 6 was modified in Ordinance 2020-13 to include the actual expiration time and date (11:59 p.m. on November 30, 2020) which is 90 day from the effective date of September 1, 2020.

Additionally, the Town Manager and I reached out to both Supervisors of Elections, Ron Turner and Mike Bennett, and provided them courtesy versions of the language clarifying that their office is responsible for regulating face covering requirements with respect to "in person" election activities as noted above.

Enforcement of Emergency Ordinance 2020-13 shall continue to be through the civil citation Special Magistrate/Code Enforcement Board process. Town Resolution 2018-11, adopted on June 4, 2018, sets forth those Town code violations that may be enforced through the issuance of a civil citation and provides for the fine schedule for the first (\$100), second (\$250) and third and subsequent offences (\$500). Accordingly, Resolution 2018-11 has to be amended to include enforcement of both face covering requirements provided for in Emergency Ordinances 2020-10 and 2020-13. A copy of Resolution 2018-11 is included in your materials for your consideration. The Town's Emergency Ordinance also include a clear statement (which exists with or without the statement) that the Town may also enforce the ordinance through other legal means, including the filing of a civil. The Town's Emergency Ordinance does not pursue enforcement through criminal prosecution or through the civil citation directed to the County Court. Finally, all legal considerations that existed with the adoption of Emergency Ordinance 2020-10, continue to exist with this Emergency Ordinance 2020-13.

The Town Manager and I recommend adoption of this Emergency Ordinance 2020-13 and we are available to respond to any questions or comments regarding this matter.

Recommended Motion

Subject to discussion of the Town Commission, approve Emergency Ordinance 2020-13.

Attachments

Emergency Ordinance 2020-11 and Resolution 2018-11

EMERGENCY ORDINANCE 2020-13

AN EMERGENCY ORDINANCE OF THE TOWN OF LONGBOAT KEY, FLORIDA, REQUIRING FACE COVERINGS AS MORE FULLY SPECIFIED HEREIN; ALLOWING FOR EXCEPTIONS TO THE FACE COVERING REQUIREMENT; AMENDING TOWN RESOLUTION 2018-11 TO INCLUDE VIOLATIONS OF EMERGENCY ORDINANCE 2020-13 AS AN OFFENSE SUBJECT TO A CIVIL CITATION; PROVIDING THAT VIOLATIONS OF EMERGENCY ORDINANCE 2020-13 ARE SUBJECT TO THE SCHEDULE OF VIOLATIONS AND FINES SET FORTH IN RESOLUTION 2018-11; PROVIDING FOR SEVERABILITY; PROVIDING FOR READING BY TITLE ONLY; AND PROVIDING FOR AN EFFECTIVE DATE AND EXPIRATION.

WHEREAS, 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, death; and

WHEREAS, on March 13, 2020, President Donald J. Trump issued a Proclamation Declaring a National Emergency concerning COVID-19; and

WHEREAS, on March 9, 2020, Ron DeSantis, Governor of the State of Florida, issued Executive Order No. 20-52 in which the Governor declared a State of Emergency exists in the State of Florida and on May 8, 2020, the Governor issued Executive Order No. 20-114 which extended the declaration of a State of Emergency for an additional period of sixty (60) days, which declaration remains in effect through July 7, 2020; and

WHEREAS, between March 17, 2020, and the date hereof, the Governor issued several Executive Orders placing numerous restrictions on individuals and businesses in response to the state-wide threat of the spread of COVID-19; and

WHEREAS, the Town of Longboat Key ("Town's") population is composed of approximately 6,700 full time residents and 69% of those residents are individuals over the age of 65; and

WHEREAS, the Town's population demographic is considered one of the populations most susceptible to severe illness and death from the COVID-19 virus; and

WHEREAS, this condition constitutes a potential life-threatening situation for the citizens and visitors within the State of Florida and the Town and is expected to continue for some undefined period of time; and

WHEREAS, since the inception of the COVID-19 pandemic, the Town and its residents have been in imminent danger from the COVID-19 pandemic that has infiltrated the State and Nation; and

WHEREAS, mitigating the effects of COVID-19 and protecting the health of its citizens and visitors is a high priority of the Town of Longboat Key; and

WHEREAS, on March 23, 2020, the Town adopted Resolution 2020-06 and recognized the declared Town-wide Public Health Emergency pursuant to Chapter 252, Florida Statutes, the Town Charter, and the Town Code from COVID-19; and

WHEREAS, the Reopen Florida Task Force, in its Report to the Governor, noted that there is currently no vaccine to prevent contraction of COVID-19 and that all Floridians have a responsibility to continue practicing mitigation measures; and

WHEREAS, on April 29, 2020, subsequent to his receipt of said Report, the Governor issued Executive Order 20-112 which is effective from May 4, 2020, until the Governor issues a subsequent order which terminates or modifies it; and

WHEREAS, Executive Order 20-112 began Phase 1 of the safe, smart, step-by-step approach to reopen Florida while continuing the social distancing CDC guidance of limiting gatherings to no more than 10 persons and distancing from other parties by six feet; and

WHEREAS, on June 1, 2020, the Town adopted Resolution 2020-17, recognizing the continued threat from COVID-19, and the ongoing public health emergency and extended the use of communication media technology for public meetings held within the Town's jurisdiction; and

WHEREAS, on June 3, 2020, the Governor issued Executive Order 20-139 which also extended and further modified Executive Order 20-112 by commencing Phase 2 of the "Plan for Florida's Recovery" as part of the safe, smart, step-by-step approach to reopen Florida; and

WHEREAS, Executive Order 20-139 provides that all persons in Florida are encouraged to follow appropriate social distancing and safety protocols issued by the CDC and Occupational Safety and Health Administration (OSHA) and that senior citizens and individuals with a significant underlying medical condition are strongly encouraged to avoid crowds and that all persons in Florida are encouraged to avoid congregating in groups larger than 50 persons and that in store retail businesses should maintain appropriate social distancing and sanitation protocols; and

WHEREAS, Executive Order 20-139, among other things, allows Town Commission and board meetings to be conducted using virtual telecommunications media technology without the requirement of a physical quorum in any specified location; and

WHEREAS, guidance released by the CDC on June 15, 2020, states (i) that the virus that causes COVID-19 is mostly spread by respiratory droplets released when people cough, sneeze, or talk and (ii) that a person can also get COVID-19 by touching a surface or object that has the virus on it and then touching their own nose, mouth, or possibly their eyes. This guidance goes on to state that "personal prevention practices (such as staying home when sick, social distancing, wearing a cloth face covering, handwashing, and environmental prevention practices (such as cleaning and disinfection) are important ways to prevent the spread of COVID-19;" and

WHEREAS, guidance released by the CDC dated June 15, 2020, indicates that the risk of contracting COVID-19 is increased by a variety of factors, including (i) interacting with more people; (ii) engaging with new people (e.g., those who don't live with you); and (iii) being close to people who may be infected. According to this guidance "it's important that you and the people around you wear a cloth face covering when in public and particularly when it's difficult to stay 6 feet away from others consistently;" and

WHEREAS, the United States Centers for Disease Control and Prevention ("CDC") has expressly found 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. Studies and evidence on infection control report that these droplets usually travel around 6 feet (about two arms' length);" and

WHEREAS, the CDC therefore specifically recommends that as businesses and communities reopen, and people resume their daily activities, people should wear face coverings to slow the spread of COVID-19, particularly "in public settings where other social distancing measures are difficult to maintain"; and

WHEREAS, the CDC advises that a significant portion of individuals with coronavirus lack symptoms ("asymptomatic") and that even those who eventually develop symptoms ("presymptomatic") 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 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, on June 20, 2020, the State of Florida's Surgeon General, Scott A. Rivkees, M.D., issued a Public Health Advisory recommending the wearing of face coverings in any setting where social distancing is not possible except under certain circumstances; and

WHEREAS, on August 7, 2020, the Governor issued Executive Order 20-193 which allows the public meetings and hearings to be conducted using communications media technology through October 1, 2020; and

WHEREAS, Sections 876.12 through 876.15, Florida Statutes, make it unlawful to wear a mask, however, pursuant to Section 876.155, Florida Statutes, this prohibition against mask wearing only applies when there is also evidence of an intent to intimidate other people, deprive them of equal protection under the law, or engage in criminal conduct; and

WHEREAS, based on recent information and data from the Sarasota County Emergency Management, the number of confirmed cases of COVID-19 in Sarasota County has increased significantly since additional reopenings were authorized under Phase 2 of the Governor's Plan for Florida's Recovery; and

WHEREAS, based on advice from medical professionals, the CDC, and the State of Florida's Surgeon General, the number of confirmed cases of COVID-19 will continue to increase exponentially if additional measures to stop or slow the spread of COVID-19 are not instituted; and

WHEREAS, the Town Commission finds the inconvenience of an Emergency 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 Town Commission finds implementation of this Emergency Ordinance is necessary for the preservation of the health, safety, and welfare of the community; and

WHEREAS, the Town Commission resolves that it is in the best interests of the residents, workers, service providers, and visitors of the Town of Longboat Key and it is in the furtherance of the public health, safety, welfare to formally adopt this Emergency Ordinance to require face coverings as more fully specified herein on an emergency basis in accordance with Article II, Sections 14 and 17 of the Town Charter.

NOW THEREFORE BE IT ENACTED BY THE TOWN COMMISSION OF THE TOWN OF LONGBOAT KEY, FLORIDA:

Section 1. The above stated recitals are true and correct and are hereby adopted and incorporated fully by reference.

Section 2. Emergency Ordinance 2020-10, entitled "Face Covering Requirements," adopted by the Town Commission on July 2, 2020, effective July 3, 2020, is scheduled to expire at 11:59 p.m. on Monday, August 31, 2020. It is the Town Commission's intent to restate, amend, and extend the Face Covering Requirements within the Town of Longboat Key for an additional 90 days beyond the term provided for in Emergency Ordinance 2020-10 to ensure that there is continued, uninterrupted face coverage usage by the Town's residents, workers, service providers, and visitors throughout the Town of Longboat Key during the ongoing COVID-19 threat to prevent the spread of the virus. Accordingly, the Town Commission adopts Emergency Ordinance 2020-13, entitled "Face Covering Requirements," as more particularly set forth herein, to take effect immediately upon the expiration of Ordinance 2020-10. Emergency Ordinance 2020-13, entitled "Face Covering Requirements" is hereby adopted and provides as follows:

A. Definitions.

"Face Covering" shall mean a uniform piece of material that securely covers a person's nose and mouth and remains affixed in place without the use of one's hands, whether store-bought or homemade, concurrent with CDC guidelines.

"Physical Distancing" or "Social Distancing" shall be synonymous terms meaning keeping space between oneself and other people by staying at least 6 feet (about 2 arms' length) apart.

B. Face Covering Required.

1. Every person living, working, visiting, or doing business in the Town of Longboat Key shall wear a face covering in any indoor location, other than home or residence, subject to the exceptions in Section C below. For the purposes of this paragraph, if a home or residence is located within a multi-family condominium or apartment complex, the "home or residence" exception does not extend to the common areas of the condominium or apartments, including but not limited to lobbies, elevators, mailrooms, and meeting rooms.

2. Every person living, working, visiting, or doing business in the Town of Longboat Key shall wear a face covering in any public outdoor location, except when solely with or among members of their household, and subject to the exceptions in Section C below.

3. Medical and surgical face masks, such as "N95" masks, or other similar medical or surgical masks, are in short supply and should be reserved for health care personnel and other first responders with the greatest need for such personal protective equipment.

4. All persons who own, manage, or are employed by any commercial business to which the public has or may obtain legally permissible access, whether publicly or privately owned, that is under a roof or is enclosed by two or more walls, doors or other means, shall post notice of the Town's Face Covering requirements for the public and employees to wear in accordance with this Emergency Ordinance. Businesses shall advise employees and customers of the Town's requirements.

C. Exceptions.

Nothing herein shall require the wearing of face coverings by the following persons or in the following locations:

1. Persons observing physical or social distancing; and
2. Persons eating or drinking; and
3. Persons inside of motor vehicles, except that persons inside of vehicles-for-hire shall still be required to wear face covering; and
4. Schools or daycare facilities, which may apply their own public safety policies and procedures; and
5. Governmental facilities, including but not limited to police and fire stations, and administrative offices which may apply their own public safety policies and procedures; and
6. Persons inside in a hotel room, motel room, vacation rental, or similarly situated accommodation which is not accessible to the public. This exception does not extend to the common areas of the lodging establishment, including but not limited to lobbies, elevators, meeting rooms, restaurants, bars and event spaces.
7. If a person is under the age of 6, use of a face covering is left to the discretion of that person's parent, guardian, or accompanying adult. Persons under the age of 2 are not required to wear a mask under any circumstances as CDC guidelines state that a face covering is not appropriate for this age group; and
8. Persons whose compliance would be detrimental to their health, safety, or welfare. If this exception is being asserted for health reasons, the person asserting this exception is not required to carry or produce documentation verifying the health condition or to specifically identify the health condition to the compliance officer or law enforcement officer; and
9. Persons working in a business or profession who do not have interactions with other persons; and
10. Persons working in a business or profession who maintain social distancing from another person; and
11. 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
12. Persons exercising, while maintaining social distancing; and

13. 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
14. Persons communicating with a hearing-impaired person who needs to see the person's mouth in order to communicate.
15. Employees, volunteers, agents, and representatives working under the direction of a County Supervisors of Election to conduct "in person" election activities in designated portions of Town Hall or other designated buildings within the Town of Longboat Key shall be subject to the applicable County Supervisors of Election's requirements and supervision with respect to face coverings.
16. Town residents exercising their "in person" voting rights during a general election that is conducted within designated portions of Town Hall or other designated buildings within the Town of Longboat Key shall be subject to the County Supervisors of Elections' requirements and supervision with respect to face coverings.

D. Enforcement and Penalty for Violation.

1. This Emergency Ordinance is adopted pursuant to the Town's home rule powers conferred by the Constitution of the State of Florida and by general law, and shall have the full force and effect of law.

2. A violation of this Emergency Ordinance shall be a noncriminal civil infraction which carries a penalty of up to Five Hundred Dollars (\$500.00). Violations of this Emergency Ordinance shall be subject to the Schedule of Violations and Fines for civil citations issued by Code Enforcement Officers of the Town as set forth in section 3, of Resolution 2018-11 as follows:

TOWN OF LONGBOAT KEY
SCHEDULE OF VIOLATIONS AND FINES

OFFENSE	FINE
First Offense	\$100.00
Second Offense	\$250.00
Third and Subsequent Offense	\$500.00

Pursuant to Section 33.15 of the Town's Code of Ordinances, the "Schedule of Violations and Fines" shall be applicable only if the violation is not contested by the violator. If the citation is contested in the manner provided by the Town's Code of Ordinances, the maximum civil penalty shall be \$500.00 and shall be determined by Special Magistrate as costs.

Section 3. Resolution 2018-11, is hereby amended by the addition of new text as follows: (New text is shown in underline format.)

SECTION 2. The Town Commission hereby establishes that the following offenses shall be subject to a citation:

1. Short term rental violations as provided for in Chapter 158, Town Code.
2. Unpermitted construction activities as provided for in Chapter 150, Town Code.
3. Marine turtle protection regulations as provided for in Chapter 100, Town Code.
4. Commercial Vendors and Prohibited Activities in Town Parks, Public Beaches, and Public Beach Accesses, as provided for in Chapter 92.

5. Violations of Emergency Ordinances 2020-10 and 2020-13, Face Covering Requirements.

Section 4. It is hereby declared to be the intention of the Town Commission that the sections, paragraphs, phrases, clauses, and sentences of this Emergency Ordinance shall be deemed severable, and if any section, paragraph, phrase, clause or sentence of this Emergency Ordinance is declared unconstitutional or otherwise invalid by the judgment of a court of competent jurisdiction, then such unconstitutionality or invalidity shall not affect the validity of this Emergency Ordinance as a whole, or any of the remaining sections, paragraphs, phrases, clauses, or sentences, other than the part held or declared to be invalid.

Section 5. Emergency Ordinance 2020-10, as adopted, will expire at 11:59 p.m. on Monday, August 31, 2020. Nothing herein shall be construed to conflict, impair, sunset, or otherwise repeal the Mask Covering Requirements provided for in Emergency Ordinance 2020-10. This Emergency Ordinance 2020-13 shall take effect at 12:00 a.m. on Tuesday, September 1, 2020.

Section 6. This Emergency Ordinance 2020-13 has been adopted in accordance with Florida Statutes 166.041(3), by the affirmative vote of 2/3 of the Town Commissioners and pursuant to Article II, Sections 14 and 17 of the Town Charter, and shall expire at 11:59 p.m. on November 30, 2020, unless otherwise extended or repealed prior to such expiration date.

ADOPTED on first reading by title only at a virtual public hearing, in accordance with the emergency procedures set forth in Article II, Section 14(b) and Section (17), of the Town Charter and Florida Statutes 166.041(3), this 31st day of August, 2020.

THE TOWN OF LONGBOAT KEY, FLORIDA

Ken Schneier, Mayor

ATTEST:

Trish Shinkle, Town Clerk

End of Agenda Item