



# PERSSON, COHEN & MOONEY, P.A.

ATTORNEYS AND COUNSELORS AT LAW

## MEMORANDUM

**TO:** Mayor Schneier and Town Commission  
**FROM:** Maggie Mooney, Town Attorney  
**CC:** Tom Harmer, Town Manager  
**REPORT DATE:** November 5, 2020  
**MEETING DATE:** November 9, 2020  
**SUBJECT:** **Emergency Ordinance 2020-21 (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. The Town's Emergency Ordinance 2020-10 was enacted for a 60 day term and expired on August 31, 2020. On August 31, 2020, the Town Commission adopted Emergency Ordinance 2020-13, an emergency ordinance that extended the face covering requirement within the Town's jurisdictional limits for an additional 90 days. Emergency Ordinance 2020-13 is scheduled to expire at 11:59 p.m. on November 30, 2020. Due to the continued ongoing threat of COVID-19 to the Town's population and the rise in COVID-19 cases within Sarasota and Manatee counties, it is recommended that the face covering requirement be extended for an additional 120 days, until March 31, 2021. In recognition of Governor DeSantis' Executive Order 20-244 (issued on September 25, 2020) and such order's suspension of local government fining authority upon individuals, the fines provided for in Emergency Ordinance 2020-21 shall be applicable to business operations within the Town. Accordingly, Emergency Ordinance 2020-21 shall be subject to applicable law as it may be amended, including any applicable future Gubernatorial Executive Orders that may be issued, amended or otherwise extended.

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 2020-21 is before the Town Commission for consideration and is substantially similar to the regulations established by the previous enactment of Emergency Ordinances 2020-10 and 2020-13. However, there are a few minor modifications that have been incorporated into Emergency Ordinance 2020-21. A summary of those revisions are as follows:

- Several new recitals (Whereas clauses) have been provided for in the Emergency Ordinance to address recent Gubernatorial Executive Orders relating to Florida’s Phase 3 Opening, extension of the declared State of Emergency and the rise in COVID-19 cases in the Sarasota and Manatee county region.
- New language was added to the introductory paragraph in Section 2 to clarify the relationship between this Emergency Ordinance 2020-21 and Emergency Ordinance 2020-13. Emergency Ordinance 2020-13 is scheduled to expire at 11:59 p.m. on November 30, 2020. The intention as stated in this paragraph is to provide for uninterrupted face covering regulations for an additional 120 days within the Town of Longboat Key during the ongoing COVID-19 threat to prevent the spread of the virus.
- Section 2, Paragraph (D)(1), includes a new sentence that recognizes that the Town’s enforcement of the Emergency Ordinance is subject to applicable Florida law, including any Gubernatorial Executive Order that may be subsequently issued.

Enforcement of Emergency Ordinance 2020-21 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 face covering requirements provided for in Emergency Ordinance 2020-21. A copy of Resolution 2018-11 is included in your materials for your consideration. The Town’s Emergency Ordinance also includes 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 lawsuit. 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 Ordinances 2020-10 and 2020-13, continue to exist with this Emergency Ordinance 2020-21.

Due to the ongoing nature of the COVID-19 threat, the recent uptick in regional COVID-19 positive cases, and the lack of a widely distributed vaccine to COVID-19, the Town Manager and I recommend that this Emergency Ordinance extend for a 120 day period (until March 31, 2021). We are recommending extending the face covering requirement for a 120-day period so the Town Commission can reassess and evaluate health advisories and recommendations in the spring of 2021, and determine at that time whether circumstances warrant extending the face covering requirement further. The Town Manager and I recommend adoption of this Emergency Ordinance 2020-21 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 2020-21.

**Attachments** (on filed in the Office of the Town Clerk)

- A. Emergency Ordinances 2020-10, 2020-13, and 2020-21
- B. Resolution 2018-11

**End of Agenda Item**