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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: March 16, 2021
MEETING DATE: March 22, 2021
SUBJECT: Emergency Ordinance 2021-03 (Face Coverings)

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 expired on August 31, 2020. On August 31, 2020, the Town Commission adopted a second Emergency Ordinance 2020-13, that extended the face covering requirement within the Town's jurisdictional limits for an additional 90 days. The Town Commission adopted a third Emergency Ordinance 2020-21 on November 9, 2020, which was scheduled to expire on March 31, 2021. Previous Town Emergency Ordinances 2020-10, 2020-13 and 2020-21, all contemplated enforcement of the Town's face covering regulations through a civil citation process that would subject violators to the Town's civil citation fine schedule of: \$100.00 (first offense), \$250.00 (second offense) and \$500.00 (third and subsequent offenses).

Due to the Town's demographics which is a particularly vulnerable to population to COVID-19, the Town Commission repeatedly, unanimously, supported face covering Emergency Ordinances to protect the Town's residents, visitors, businesses, workers, and guests. Throughout the COVID-19 pandemic, the Town has closely monitored and followed the recommendations of local and state health departments, the CDC, the Governor, and President. The CDC and local health departments have continued to stress the importance of ongoing face covering usage to minimize the spread of COVID-19 and new variants of the virus.

On September 25, 2020, Governor DeSantis issued Executive Order 20-244 and suspended local governments' ability to collect fines and penalties associated with COVID-19 against individuals. In observance of Executive Order 2020-244, the Town modified the applicability of fines in its third Emergency Ordinance 2020-21 to only apply to businesses operating within the Town. The Town also recognized in Emergency Ordinance 2020-21 that enforceability was subject to

applicable law as amended, including future Gubernatorial Executive Orders that may be issued, amended, or otherwise extended.

Recently, on March 10, 2021, Governor DeSantis entered Executive Order 2021-65 and remitted “all fines related to local government COVID-19 restrictions” imposed against individuals and businesses between March 1, 2020, and March 10, 2021, and provided that such Executive Order would serve as a defense to the collection of any local government COVID-19 fines. The significance of Executive Order 2021-65 (coupled with Executive Order 2020-244 which prohibited fines against individuals) is that Governor DeSantis has essentially nullified a municipality’s ability to enforce a face covering ordinance or other COVID-19 restrictions through the local government’s civil fining methods. Copies of Executive Orders 2020-244 and 2021-65 are attached.

Emergency Ordinance 2021-03 was drafted to be legally enforceable in light of currently applicable Gubernatorial Executive Orders. Emergency Ordinance 2021-03 is different than prior Emergency Ordinances because it includes both recommendations and requirements relating to individual’s use of face coverings (with face covering requirements applicable on Town property and in Town facilities); provides for enforcement of face covering requirements at specific locations through removal or through a lawful trespass action, and eliminates enforcement through civil penalties. Specifically, Emergency Ordinance 2021-03 provides the following:

- 1) It encourages every person in the Town to wear face coverings indoors and outdoors, and encourages businesses to post signage within their buildings recommending that the public and business employees wear face coverings. See Section 3 of Emergency Ordinance 2021-03.
- 2) It requires that face coverings and social distancing be observed at all Town facilities (including Town parks and tennis facilities) and public buildings. Failure to observe the Town’s requirements will subject individuals to removal from Town facilities or buildings. A list of exceptions to the face covering requirement is included (i.e., persons observing physical or social distancing, persons eating or drinking, persons under the age of 6, etc.). The list is substantially similar to the exceptions that were previously included in Emergency Ordinances 2020-10, 2020-13, and 2020-21 . See Section 4 of Emergency Ordinance 2021-03.
- 3) It allows every business in the Town to require the wearing of face coverings to enter and patronize their business. If such businesses post signage relative to their face covering requirements and patrons refuse to observe that requirement or vacate the premise, the business owner or designee may trespass the refusing person pursuant to Florida law. A copy of Florida Statutes 810.08 is attached.
- 4) It repeals Emergency Ordinance 2020-21 immediately and replaces that ordinance with the above regulations.

- 5) It become effective on March 22, 2021, (upon adoption) and will expire 60 days later on Friday, May 21, 2021.

“Ordinances” are generally defined by Florida law as “an official legislative action of a governing body which is a *regulation of a general and permanent nature and enforceable as a local law*. Fla. Stat. § 166.041(1)(a). [Emphasis supplied]. 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.

Due to the ongoing nature of the COVID-19 threat, the spread of virus variants, ongoing vaccine distribution efforts, and changing federal, state, and local legal restrictions and directives, the Town Manager and I recommend that this Emergency Ordinance 2021-03 be adopted for no more than a 60 day period (until 11:59 p.m. on Friday, May 21, 2021). We are recommending a maximum 60 day period, so that the Town Commission can reassess and evaluate health advisories, legal constraints, and any additional circumstances that may arise between now and May 2021. If circumstances warrant, then the Town Commission can adopt a new Emergency Ordinance in May that addresses those conditions. The Town Manager and I recommend adoption of this Emergency Ordinance 2021-03 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 2021-03.

Attachments:

The following attachments are available in the Town Clerk’s Office:

- Emergency Ordinance 2021-03
- Governor DeSantis’ Executive Orders 2021-65 (March 10, 2021) and 2020-244 (September 25, 2020)
- Florida Statutes § 810.08

End of Agenda Item