

**EMERGENCY ORDINANCE NO. O-20-28**

**AN EMERGENCY ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER HAVEN, FLORIDA RELATING TO PUBLIC HEALTH; REQUIRING PERSONS THAT LIVE, WORK, VISIT OR DO BUSINESS IN THE CITY OF WINTER HAVEN, FLORIDA, TO WEAR FACE COVERINGS IN CERTAIN PUBLIC PLACES TO STOP OR SLOW THE SPREAD OF NOVEL CORONAVIRUS DISEASE 2019 (COVID-19); PROVIDING FOR EXCEPTIONS; ESTABLISHING ENFORCEMENT AND PENALTY PROVISIONS FOR VIOLATIONS; MAKING FINDINGS; PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, Novel Coronavirus Disease 2019 (COVID-19) is a severe acute respiratory illness that can spread among humans through respiratory transmission and presents with symptoms of cough, fever and shortness of breath; and

**WHEREAS**, on March 1, 2020, Ron DeSantis, Governor of the State of Florida, issued Executive Order number 20-51, directing the Florida Department of Health to issue a Public Health Emergency; and

**WHEREAS**, on March 1, 2020, the State Surgeon General and State Health Officer declared that a Public Health Emergency exists in the State of Florida as a result of COVID-19; and

**WHEREAS**, on March 9, 2020, Governor DeSantis issued Executive Order 2020-52, declaring a state of emergency for the entire State of Florida as a result of COVID-19 and issued subsequent Executive Orders extending the state of emergency for the entire State of Florida as a result of COVID-19 through September 5, 2020; and

**WHEREAS**, Governor DeSantis has issued a number of subsequent executive orders that limit certain activities and recommend that all persons in Florida follow appropriate social distancing and safety protocols issued by the Centers for Disease Control and Prevention (CDC) and the United States Occupational Safety and Health Administration (OSHA); and

**WHEREAS**, Section 252.38, Florida Statutes, authorizes political subdivisions, including municipalities, to declare a state of local emergency and to take whatever prudent action is necessary to ensure the health, safety and welfare of the community; and

**WHEREAS**, on March 18, 2020, the City Commission of the City of Winter Haven, Florida adopted Resolution No. R-20-23, declaring a state of local emergency within the incorporated limits of the City of Winter Haven due to the threat posed to public health and safety by COVID-19 which state of local emergency has continued in effect consistent with the Governor's Executive Orders declaring a state of emergency within the entire State of Florida and applicable Florida law; and

**WHEREAS**, public health experts have consistently recommended avoiding close physical interaction between people in order to slow the spread of COVID-19; and

**WHEREAS**, despite measures previously taken, COVID-19 has rapidly spread in the State of Florida, and based on the advice from medical professionals, the number of confirmed cases of COVID-19 in Polk County, and in particular the City of Winter Haven, will increase exponentially if additional measures to stop or slow the spread of COVID-19 are not instituted; and

**WHEREAS**, the City of Winter Haven, Florida, is experiencing an increase in both the number of documented COVID-19 cases and the trajectory of positive tests as a percent of total tests; and

**WHEREAS**, the City of Winter Haven, Florida, has already adopted a policy applicable to all City employees and City buildings requiring face coverings unless certain exceptions are met; and

**WHEREAS**, it is now necessary for the City of Winter Haven to implement further restrictions for the general health, safety, and welfare of the community; and

**WHEREAS**, the 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, and that 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 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 City Commission is mindful of the need to protect and preserve the rights and civil liberties of the citizens of the City of Winter Haven while aggressively defending the health and wellbeing of those citizens; and

**WHEREAS**, the City of Winter Haven, Florida is also establishing distribution points to provide face coverings at no charge to individuals; and

**WHEREAS**, the Winter Haven Police Department is prepared to provide face

coverings/masks at no charge to individuals as needed; and

**WHEREAS**, on July 7, 2020, the Board of County Commissioners of Polk County, Florida, authorized the purchase of sufficient numbers of face coverings to be used by the citizens of Polk County at no charge; and

**WHEREAS**, consistent with the ongoing nature of the COVID-19 emergency, it is appropriate in order to ensure the health, safety and welfare of the community during the present state of emergency to require face coverings consistent with the provisions provided herein; and

**WHEREAS**, in accordance with Section 19 of the City of Winter Haven Charter and for the immediate preservation of public peace, property, health or safety, the City adopts this Emergency Ordinance.

**NOW THEREFORE, BE IT ENACTED BY THE PEOPLE OF THE CITY OF WINTER HAVEN, FLORIDA AS FOLLOWS:**

**SECTION 1. Findings of Fact.** The foregoing findings are true and correct and are hereby adopted and incorporated herein by reference and constitute the factual basis for the passage of this Emergency Ordinance.

**SECTION 2. 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, consistent with CDC guidelines.

"Social Distancing" shall mean keeping space between yourself and other people by staying at least 6 feet from other people.

"Companion" shall mean a person by whom you are accompanied.

### **SECTION 3. Face Coverings Required.**

a. Every person working, living, visiting, or doing business in the City of Winter Haven, Florida shall wear a face covering consistent with CDC guidelines in any indoor location, other than their home or residence, when not maintaining social distancing from other persons, excluding family members or companions.

b. Medical and surgical 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.

### **SECTION 4. Exceptions.**

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

- a. Persons under the age of eight (8) years old;
- b. Persons observing social distancing in accordance with CDC guidelines;
- c. Persons for whom a face covering would cause impairment due to an existing health condition;
- d. Persons working in a business or profession who do not have interactions with other persons;
- e. Persons working in a business or profession who maintain social distancing from other persons;
- f. Persons working in a business or profession where use of a face covering would prevent them from performing the duties of their business or profession;

- g. Persons exercising, while maintaining social distancing in accordance with CDC guidelines;
- h. Persons eating or drinking;
- i. Persons under the age of eighteen (18) years old while participating in youth sports;
- j. Public safety, fire and other life safety and health care personnel, as their protective equipment requirements will be governed by their respective agencies;
- k. Persons communicating with someone who is hearing impaired where the wearing of a face covering would impede communication, provided that social distancing is observed to the greatest extent practicable;
- l. Persons for whom the requirement to wear a face covering would cause a conflict with the Americans with Disabilities Act (ADA).

#### **SECTION 5. Enforcement and Penalties.**

It is the intent of the City Commission to seek voluntary compliance with the provisions contained herein and to educate and warn of the dangers of non-compliance. Owners of businesses within the City of Winter Haven, Florida will be considered in compliance with the requirements of this Emergency Ordinance if they take four steps. Those include:

- Posting signage about the face covering requirement;
- Announcing the requirement over the businesses public address system, if possible;
- Requiring employees to wear face coverings, unless they are exempt;

and

- Making a “reasonable effort” to get customers to wear a face covering, which can include asking them to wear said face covering.

However, in the event voluntary compliance is not achieved, then violation of this Emergency Ordinance, and any order issued pursuant hereto, shall be subject to a fine of One Hundred Fifty Dollars (\$150.00) pursuant to Section 1-13 of the Code of Ordinances of the City of Winter Haven, Florida, or as otherwise provided by law. Notwithstanding any provision of Section 1-13 of the City Code to the contrary, a violation of this Emergency Ordinance, and any order issued pursuant hereto, shall only be subject to a fine of One Hundred Fifty Dollars (\$150.00), and those provisions of Section 1-13 of the City Code providing for fines in excess of One Hundred Fifty Dollars (\$150.00) or providing for a term of imprisonment shall not be applicable to violations of this Emergency Ordinance or orders issued pursuant hereto.

**SECTION 6. Applicability.**

Any provision of this Emergency Ordinance that conflicts with any State or Federal law or constitutional provision, or conflicts with or is superseded by a current or subsequently- issued executive order of the Governor or other authority, shall be deemed inapplicable and deemed severable from this Emergency Ordinance, with the remainder of this Emergency Ordinance remaining in full force and effect. This Emergency Ordinance applies within the jurisdictional limits of the City of Winter Haven, Florida.

**SECTION 7. Effective Date; Sunset Provision.**

This Emergency Ordinance shall become effective on July 14, 2020 at 5:00 p.m. and shall expire at 5:00 p.m. on August 14, 2020 unless rescinded and/or extended by further action of the City Commission.

INTRODUCED AND PASSED by the City Commission of the City of Winter Haven, Florida, in regular session this 13th day of July, 2020.

CITY OF WINTER HAVEN

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MAYOR-COMMISSIONER

ATTEST:

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CITY CLERK

Approved as to form:

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CITY ATTORNEY