

BACKUP MATERIALS INCLUDED WITH AGENDA REQUEST FOR:

Proposed Ordinance No. 21-5367

Materials included:

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1. Proposed Ordinance No. 21-5367

ORDINANCE NO. 21-5367

AN ORDINANCE OF THE CITY OF SARASOTA, FLORIDA, REQUIRING FACE COVERINGS AS MORE FULLY SPECIFIED HEREIN; ALLOWING FOR EXCEPTIONS TO THE FACE COVERING REQUIREMENT; PROVIDING A CONTINGENT PENALTY FOR VIOLATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR READING BY TITLE ONLY; AND PROVIDING FOR 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 may cause serious illness 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 this declaration has been extended, most recently on February 26, 2021, when the Governor issued Executive Order No. 21-45 which further extended the declaration of a State of Emergency for an additional period of sixty (60) days, which declaration remains in effect through April 27, 2021; and,

WHEREAS, on March 17, 2020 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, on March 13, 2020 the City of Sarasota declared a City-wide Public Health Emergency pursuant to Chapter 13 of the Sarasota City Code with said declaration being extended by the City Manager for additional periods of seven (7) days through the present date; and,

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

WHEREAS, the Reopen Florida Task Force, in its Report to the Governor, noted 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 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, 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, and 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 "[i]t'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, 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, 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, on September 25, 2020 the Governor issued Executive Order 20-244 which superseded and eliminated the restrictions of Executive Orders 20-112 and 20-139; and,

WHEREAS, Executive Order 20-244 suspended the collection of fines and penalties associated with COVID-19 regulations enforced upon individuals; and,

WHEREAS, on November 24, 2020 the Governor issued Executive Order 20-297 which extended Executive Order 20-244 to remain in effect through the duration of a State of Emergency, unless otherwise modified or rescinded; and,

WHEREAS, on February 17, 2021, at the regular City Commission meeting, the Commission discussed Emergency Ordinance No. 20-5329 and it was noted that the Governor's Executive Order 20-244 suspending the collection of fines and penalties rendered the City's ordinance unenforceable; and,

WHEREAS, on February 17, 2021 a motion was made to extend Emergency Ordinance 20-5329, which failed 3-2, because it did not have the requisite four votes needed for passage of an Emergency Ordinance; therefore, the Emergency Ordinance expired on February 26, 2021; and,

WHEREAS, on March 1, 2021, at the regular City Commission meeting, the Commission passed Resolution 21R-2984 by unanimous vote, finding that adherence to current CDC COVID-19 guidelines regarding face coverings and social distancing is necessary to combat the transmission and spread of the virus; and,

WHEREAS, subsequent to the March 1, 2021, Commissioner Battie requested that Emergency Ordinance 20-5329 be placed on the next City Commission agenda and as he was previously on the prevailing side of the previous vote, it was placed on the agenda for the March 15, 2021 regular City Commission meeting; and,

WHEREAS, on March 10, 2021, the Governor issued Executive Order 21-65, entitled "Clemency Order Regarding Remission of Fines", which provides for the remittance of any fine imposed by local governments for COVID-19-related restrictions; and,

WHEREAS, Executive Order 21-65 shall serve as a defense to the collection of any fines imposed by local governments for COVID-19-related restrictions, the City of Sarasota cannot impose any fine for violation of an ordinance requiring face coverings; and,

WHEREAS, on March 15, 2021, at the regular City Commission meeting, a motion was made to reinstate Emergency Ordinance 20-5329, which failed 3-2, because it did not have the requisite four votes needed for passage of an Emergency Ordinance; and

WHEREAS, although an emergency ordinance requires a supermajority vote to be adopted, a regular ordinance only requires a simple majority; and,

WHEREAS, the City Commission resolves that it is in the best interests of the residents of the City of Sarasota and it is in the furtherance of the public health, safety, welfare to adopt this regular ordinance as more fully specified herein in accordance with Article IV, Section 3 of the City Charter and subject to the terms of the Governor's Executive Orders 20-244 and 21-65.

NOW THEREFORE BE IT ENACTED BY THE PEOPLE OF THE CITY OF SARASOTA, FLORIDA:

Section 1. Ordinance No. 21-5367, entitled "Face Covering Required", shall provide 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, or a clear face shield that covers a person's eyes, nose and mouth which wraps around the sides of the face and extends to below the chin.

"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 City of Sarasota 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 City of Sarasota 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.

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. County, State, or Federal governmental facilities, including but not limited to courthouses, 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 18, 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.

D. Enforcement and Penalty for Violation.

A violation of this Ordinance cannot be enforced as long as the Governor's Executive Order Nos. 20-244 (suspending the collection of fines and penalties associated with local governmental COVID-19-related restrictions) and 21-65 (providing clemency regarding remission of fines and a defense to the collection of fines for any COVID-19-related restrictions) are in full force and effect. Should these Executive Orders be lifted, a violation of this Ordinance shall be a noncriminal civil infraction which carries a penalty of up to Five Hundred Dollars (\$500.00) and if a person elects not to contest a citation, the civil penalty shall be Fifty Dollars (\$50.00).

Section 2. The Code of the City of Sarasota, Chapter 2, Administration, Article V, Boards, Commissions and Committees, Division 5, Code Compliance System, Section 2-309, Jurisdiction, is hereby amended by the addition of new text as follows:

- a) The magistrate shall have the jurisdiction and authority to hear and decide alleged violations of the following provisions of this code, as the same may be amended from time to time:

...

- 24) Face Covering Required, Ordinance No. 21-5367.

Section 3. It is hereby declared to be the intention of the City Commission that the sections, paragraphs, phrases, clauses and sentences of this Ordinance shall be

deemed severable, and if any section, paragraph, phrase, clause or sentence of this 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 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 4. This ordinance shall take effect immediately upon second reading.

Section 5. This ordinance shall remain in effect until repealed by subsequent ordinance.

OR

This ordinance shall remain in effect as long as an Emergency Order declaring a City-wide Public Health Emergency due to COVID-19 is in place in the City of Sarasota.

PASSED on first reading by title only, after posting on the bulletin board at City Hall for at least three (3) days prior to first reading, as authorized by Article IV, Section 2, Charter of the City of Sarasota, Florida this ___ day of _____, 2021.

PASSED on second reading and finally adopted this ___ day of _____, 2021.

CITY OF SARASOTA, FLORIDA

Hagen Brody, Mayor

ATTEST:

Shayla Griggs
City Auditor and Clerk

_____ Mayor Hagen Brody

_____ Vice Mayor Erik Arroyo

_____ Commissioner Jen Ahearn-Koch

_____ Commissioner Liz Alpert

_____ Commissioner Kyle Scott Battie

2. Legal Advertisement of Public Hearing



NOTICE OF PUBLIC HEARING

Notice is hereby given that the **CITY COMMISSION** of the City of Sarasota, Florida will meet on **Tuesday, May 4, 2021, at 6:00 p.m.** in the Commission Chambers, City Hall, 1565 First Street, Sarasota, Florida. **Starting at 6:00 p.m. or as soon thereafter as possible, the Commission will open the scheduled Public Hearings in the order they appear on the Agenda.** The following Ordinance will be considered at the above scheduled meeting:

ORDINANCE NO. 21-5367

AN ORDINANCE OF THE CITY OF SARASOTA, FLORIDA, REQUIRING FACE COVERINGS AS MORE FULLY SPECIFIED HEREIN; ALLOWING FOR EXCEPTIONS TO THE FACE COVERING REQUIREMENT; PROVIDING A CONTINGENT PENALTY FOR VIOLATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR READING BY TITLE ONLY; AND PROVIDING FOR AN EFFECTIVE DATE.

Said proposed Ordinance is on file in the Office of the City Auditor and Clerk at City Hall. If you wish to obtain a copy, please call (941) 263-6222 between 8:00 a.m. to 5:00 p.m. Monday through Friday.

Interested persons are welcome to attend and may register to speak in respect to the above-proposed ordinance. Individuals are required to wear a face covering while inside City Hall buildings, unless they have a medical exception. "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.

Individuals who prefer to participate remotely in the City Commission meeting may obtain instructions to participate via zoom by emailing clerk@sarasotafl.gov with your request no later than the **deadline of 5:00 pm on Friday, April 30, 2021.** Individuals may provide written comments to the City Commissioners on any city topic at any time by emailing CityCommissioners@sarasotafl.gov.

If a person decides to appeal any decision made by the board, agency, or commission with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

In accordance with the Americans with Disabilities Act of 1990 and Section 286.26, Florida Statutes, persons with disabilities needing special accommodation to participate in such public hearing should contact the Office of the City Auditor and Clerk at (941) 954-4160 at least two (2) business days prior to the date of the public hearing as to the nature of the aid and/or service desired. Reasonable auxiliary aids and services will be made available to qualified disabled individuals to the extent that no undue financial or administrative burden results. For the benefit of individuals utilizing hearing aids with a T-coil, the City Commission Chambers and SRQ Media Studio are outfitted with a Hearing Induction Loop for enhanced hearing assistance.

CITY OF SARASOTA
By: Shayla Griggs
City Auditor and Clerk

Legal Date: April 23, 2021