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EMERGENCY ORDINANCE NO. 2020-5

AN EMERGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PERRY, FLORIDA, AMENDING AND REPLACING EMERGENCY ORDINANCE 2020-4, PROVIDING FOR INCORPORATION OF RECITALS AS LEGISLATIVE FINDINGS; PROVIDING FOR DEFINITIONS; PROVIDING FOR MANDATORY REQUIREMENTS; PROVIDING FOR PENALTIES AND ENFORCEMENT; PROVIDING FOR APPLICABILITY AND CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Perry, Florida (hereinafter "Council"), finds that COVID-19 presents a danger to the health, safety, and welfare of the public; and

WHEREAS, COVID-19 is spread through airborne transmission from individuals sneezing, speaking, and coughing, and infectious droplet nuclei can spread for a great distance, although how far is not fully understood at present; and

WHEREAS, since April of 2020, the Council has proactively directed the implementation of numerous efforts, including an aggressive communications campaign, to encourage persons in the City to practice social distancing, wash and sanitize their hands, clean high touch surfaces, and wear face coverings as community mitigation strategies to increase containment of COVID-19; and

WHEREAS, Governor DeSantis has issued a series of executive orders to re-open Florida, and some of the restrictions to flatten the curve and slow the spread of COVID-19 have correspondingly been relaxed; and

WHEREAS, the continued operation of businesses providing goods and services is necessary to provide essential goods and services to the public and visitors and to support the local economy; and

WHEREAS, the re-opening of the State will lead to more contact between individuals and the potential for increased community spread of the disease; and

WHEREAS, despite mitigation efforts, as reported by Florida Department of Health Officer ("Department of Health") Padraic Juarez, the number of positive cases of COVID-19 in Taylor County has spiked and continue to increase, which indicates greater local community spread and transmission of the disease; and

WHEREAS, federal and state health officials have indicated that they expect additional cases of COVID-19 to be identified in the coming days and, based on the highly contagious nature of COVID-19, additional person-to-person transmission is likely; and

WHEREAS, conditions presented by the threat of COVID-19 continue to pose a threat to the public health that requires dynamic emergency response, including the imposition of additional mitigation strategies as conditions require; and

WHEREAS, the use of face coverings has been identified as a measure to assist in preventing individuals who may be shedding COVID-19 from spreading it to other individuals; and

WHEREAS, to reduce the spread of the disease, the Centers for Disease Control ("CDC") recommends the use of cloth face coverings in public settings where other social distancing measures are difficult to maintain, such as grocery stores and pharmacies, since many individuals with no symptoms can spread the virus, and even individuals who develop symptoms can transmit the virus to others before showing symptoms; and

WHEREAS, Florida Medical Association President Ronald L. Giffler, MD, JD, MBA, has issued a statement urging Floridians to use face coverings to prevent the further spread of COVID-19, and further calling on local officials to adopt regulations requiring the use of masks in public places, specifically stating "(t]he science is clear. Asymptomatic infected individuals can release aerosol particles while breathing and speaking. Not wearing a mask or face covering increases exposure, whereas universal masking greatly reduces the spread of viral particles. The message is simple: For the sake of your health and the health of everyone around you, Florida's doctors want you to wear a mask."; and

WHEREAS, on June 22, 2020, after Florida reported more than 4,000 new cases of COVID-19 in a single day, State Surgeon General Scott Rivkees issued an additional public health advisory recommending people wear face coverings in any setting where social distancing is not possible, stating that "all individuals [should] refrain from participation in social or recreational gatherings of more than 50 people" and in smaller crowds "practice social distancing by maintaining a distance of at least six feet from each other and wear a face covering."; and

WHEREAS, the CDC recommends only simple cloth face coverings for the general population and not surgical masks or N-95 respirators because these are critical supplies that must continue to be reserved for healthcare workers and other medical first responders; and

WHEREAS, cloth face coverings are relatively inexpensive and readily available as the CDC states that they can be made from household items and provides online guidance for

making "do-it-yourself" coverings for people who cannot or do not want to buy one from the increasing sources producing and selling coverings; and

WHEREAS, the Council has committed to make face coverings available to the public; and

WHEREAS, the CDC does not recommend wearing a 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 a mask without assistance; and

WHEREAS, a meeting of the Council was scheduled for July 14, 2020, with an agenda item of discussing the recent increase in COVID-19 cases in the City and to consider additional mitigation requirements to be imposed city wide; and

WHEREAS, the Council was provided with information regarding mandatory face covering requirements adopted in other parts of the State and a list of resources regarding recommendations relating to face coverings issued by various worldwide, federal, and state health organizations; and

WHEREAS, at the July 14, 2020 meeting, the Council received information from Department of Health Officer Padraic Juarez confirming a spike in local positive COVID-19 cases; and

WHEREAS, the Council passed an emergency facemask covering ordinance on July 14, 2020 (Emergency Ordinance 2020-4); and

WHEREAS, the Council has determined that this Emergency Ordinance should amend Emergency Ordinance 2020-4, in order to make needed amendments thereto; and

WHEREAS, adopting face covering requirements via ordinance, as opposed to local emergency powers, would permit enforcement through civil citations and fines instead of criminal prosecution as a second-degree misdemeanor; and

WHEREAS, the Council determined that an emergency exists, and the immediate enactment of this Emergency Ordinance is necessary; and

WHEREAS, the Council finds implementation of this Emergency Ordinance is necessary for the preservation of the health, safety, and welfare of the community.

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

SECTION 1. Recitals.

The recitals of this Emergency Ordinance are incorporated herein and constitute the legislative findings of the Council. The recitals are made fully a part of this Emergency Ordinance as if the recitals were set out in a section hereunder.

SECTION 2. Definitions.

- i. **Face Covering.** A "face covering" is a material that covers the nose and mouth and that fits snugly against the sides of the face so there are no gaps. It can be secured to the head with ties or straps or simply wrapped around the lower face. It can be made of a variety of materials, such as cotton, silk, or linen. Coverings with materials made of multiple layers is highly encouraged. A cloth face covering may be factory-made or sewn by hand, or the cloth face covering can be improvised from household items. The CDC has posted additional information regarding how to make, wear, and wash a cloth face covering at <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/about-face-coverings.html>.
- ii. **Business Establishment.** A "business establishment" means a location with a roof overhead under which any business is conducted, goods are made or stored or processed or where services are rendered. The term "business establishment" includes transportation network companies, such as Ubers and Lyft, vehicles operated for mass transit, taxis, jitneys, limousines for hire, rental cars, and other passenger vehicles for hire. The term "business establishment" includes locations where non-profit, governmental, and quasi-governmental entities facilitate public interactions and conduct business. The term "business establishment" also includes places of worship.
- iii. **Lodging Establishment.** A "lodging establishment" shall have the same meaning as the term "transient public lodging establishment" has in section 509.013(4)(a)1, Florida Statutes (2019). Accordingly, for purposes of this Emergency Ordinance, a "lodging establishment" means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.

SECTION 3. Requirements and Exclusions.

- i. **Requirements.** The wearing of a face covering is required of:
 - a. An individual in a business establishment while in that business establishment.
 - b. All persons who own, manage, or are employed by a business located in the City while on-duty and having direct or indirect customer contact, including persons working in a kitchen or otherwise preparing or serving food or beverages to customers.
 - c. Every person living, working, visiting or doing business in the City of Perry while in any public outdoor location, except when solely with or among members of their household.

- ii. Exceptions. The requirements of this Emergency Ordinance do not apply to:
- a. Persons under the age of six years.
 - b. Public safety, fire, and other life safety and health care personnel, as their personal protective equipment requirements will be governed by their respective agencies.
 - c. Persons exercising while observing at least 6 feet of distancing from another person.
 - d. Restaurant and bar patrons while eating or drinking. It is the intent of this provision that a face covering will be worn while traversing a business establishment for ingress and egress, to use the facilities, and while otherwise standing when persons are unable to maintain at least 6 feet of distancing.
 - e. Persons eating or drinking.
 - f. Business owners, managers, and employees who are in an area of a business establishment that is not open to customers, patrons, or the public, provided that 6 feet of distance exists between persons. This exception does not apply to employees who are present in the kitchen or other food and beverage preparation area of a business establishment.
 - g. An individual in a lodging establishment who is inside of the lodging unit, including, but not limited to, a hotel room, motel room, vacation rental unit, timeshare unit, or similar unit.
 - h. Any person in a school, regardless of whether public or private, as mask wearing in schools will be regulated by the schools.
 - i. Children while under the custody of a licensed childcare facility, including day care centers (including organizations like Boys and Girls Club, and Head Start).
 - j. Persons engaged in outdoor activity when they are alone and not near others.
 - k. Persons engaged in any outdoor activity permitted under City, County, or State order, but face coverings should be readily available when coming within six (6) feet of an individual not part of a person's immediate family or cohabitating living unit.
 - l. Medical, dental or other health care facilities or offices, as mask wearing in those facilities will be regulated pursuant to guidance specifically directed to those particular facilities.

- m. Persons who are separated from any other person by means of barriers such as plastic face shields, plastic or glass barriers, or other devices that effectively prevent the transmission of the COVID-19 virus.
- n. Persons under the age of nineteen (19) years old while participating in youth sports.
- o. 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.
- p. Persons for whom the requirement to wear a face covering would cause a conflict with the Americans with Disabilities Act (ADA).
- q. 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.
- r. An individual who is obtaining a service involving the nose or face for which temporary removal of the face covering is necessary to perform the service.
- s. A person in a Taylor County government building, as the Council defers to the Taylor County Board of County Commissioners to implement its own rules and procedures for protection of the public.
- t. A person in a Constitutional Officer's office, as the Council defers to those Constitutional Officers to implement their own rules and procedures for protection of the public.
- u. A person in a Judicial Office or Courtroom, as the Council defers the Judiciary to implement rules and procedures for protection of the public under its purview.
- v. 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.
- w. Persons working in a business or profession who do not have interactions with other persons.
- x. The Taylor County Jail staff and inmates, as the Council defers to the Sheriff to implement rules and procedures for protection of its staff and inmates (Including, but not limited to Taylor County Dispatch).
- y. Persons attending church or other related religious activities.

- z. Persons at nursing homes, whether employees, residents, or otherwise.
- aa. Persons at hospitals, whether employees, patients, or otherwise.
- iii. Signage.
 - a. Every business establishment is required to post signage (consistent with that template notice attached hereto) notifying all persons of the requirement to wear a face covering as provided in this section.
- iv. Interpretation.
 - a. Nothing herein shall require or allow a person to wear a face covering to conceal the identity of the wearer in violation of Chapter 876, Florida Statutes.

SECTION 4. Penalties and Enforcement.

- i. This Order may be enforced by City law enforcement personnel through the issuance of Code Violations and Notices of Violations pursuant to applicable provisions of Florida law, Chapter 162, Florida Statutes, and City Code.
- ii. A violation of this Emergency Ordinance is a noncriminal infraction. A violation of this Emergency Ordinance does not authorize the search or arrest of an individual. Prior to the issuance of a citation, the individual will be asked to comply with the Emergency Ordinance or be able to explain how an exception in section 3(ii) applies to them. Failure to comply with the requirements of this Emergency Ordinance presents a serious threat to the public health, safety, and welfare, and a citation may be issued for such a violation after the inquiry referenced above.
- iii. The penalty for a violation of this Emergency Ordinance is:
 - a. For a first offense, a verbal or written warning.
 - b. For a second offense, a fine of \$25.00.
 - c. For a third offense, a fine of \$50.00.
 - d. For a fourth and each subsequent offense, a fine of \$100.00.
 - e. All other remedies available at law or equity, including injunction, remain available to the City, even after issuance of a citation.
- iv. Only warnings will be given prior to 12:01 a.m. on July 21, 2020. After 12:01 a.m. on July 21, 2020, a person alleged to be in violation of this Emergency Ordinance must first be cited with a warning. Thereafter, fines for subsequent violations may be imposed consistent herewith.

- v. Any person who is given a citation and fine hereunder may request a hearing within ten (10) days by filing a request for the same with the Clerk of the City of Perry. The matter will then be set for hearing before the Code Enforcement Magistrate in conformity with City of Perry Code, Chapter 29.
- vi. Any fines ordered hereunder shall be paid to the City of Perry within thirty (30) days of citation of the violation of this Emergency Ordinance. However, request for a hearing before the Code Enforcement Magistrate shall toll the date for payment of said fine.
- vii. Any fine assessed hereunder may be imposed as a lien against real property or against the person's City of Perry utility account (if applicable).
- viii. Any person who is warned or cited, and advises the citing officer that they do not own a mask, should be given a mask (free or charge) if said officer has extra masks meant for distribution to the public in his or her possession. This does not require the officer to give away his or her own personal protective equipment, or personal protective equipment which has not been designated by the Police Department for distribution to the public.

SECTION 5. Applicability and Conflict.

This Emergency Ordinance replaces Emergency Ordinance 2020-4, and shall apply citywide and establish minimum standards, though Taylor County, the State of Florida, or Federal agencies may adopt more stringent rules and procedures regarding the face covering requirement. All City ordinances or parts of ordinances in conflict with this Emergency Ordinance are hereby repealed to the extent of said conflict.

SECTION 6. Severability.

If any word, phrase, clause, section, or portion of this Emergency Ordinance is declared by any court of competent jurisdiction to be invalid, void, unconstitutional, or unenforceable, then all remaining provisions and portions of this Emergency Ordinance shall remain in full force and effect.

SECTION 7. Effective Date.

This Emergency Ordinance shall be deemed to be effective upon signature by the Mayor, shall take effect at 12:01 a.m. on July 20, 2020, and shall remain in effect until the earlier of:

- i. August 13, 2020 at 11:59 p.m.; or
- ii. The state of emergency related to COVID-19 declared by the Governor of Florida expires; or
- iii. The County of Taylor issues a uniform, county-wide, ordinance, resolution or other order regulating face coverings; or

- iv. The Governor and/or the State of Florida preempt laws and rules regarding face coverings; or
- v. The Council rescinds this Emergency Ordinance.

BE IT SO ORDAINED, by affirmative vote of five (5) in favor and zero (0) against, in a emergency meeting assembled on the 17th day of July, 2020.

ALAN HALL, MAYOR

ATTEST:

TAYLOR BROWN
CLERK OF THE CITY COUNCIL

**Due to the
COVID-19
pandemic, face
coverings
required while
indoors.**

