

AN EMERGENCY ORDINANCE TO REQUIRE FACE COVERINGS IN CERTAIN CIRCUMSTANCES; AND OTHER MATTERS RELATED THERETO

WHEREAS, on March 13, 2020, Governor Henry McMaster issued Executive Order No. 2020-08, as extended by Executive Order 2020-40 dated June 11, 2020, related to 2019 Novel Coronavirus (“**COVID-19**”) and declared that a state of emergency exists in the State of South Carolina (the “**State**”); and

WHEREAS, on March 16, 2020, the City Council of the City of West Columbia (the “**City Council**”), as the governing body of the City of West Columbia, South Carolina (the “**City**”) enacted an emergency ordinance to also declare a public emergency and temporarily suspend its normal operating procedures; and

WHEREAS, as the number of COVID-19 cases continues to grow in the State, the South Carolina Department of Health and Environmental Control (“**DHEC**”) continues to warn of the risk of localized person-to-person spread of COVID-19, creating an extreme public health risk; and

WHEREAS, as of July 1, 2020, there were 37,919 confirmed cases of COVID-19 in the State, including 2,059 confirmed cases in Lexington County, South Carolina (the “**County**”) and 42 confirmed deaths in the County; and

WHEREAS, the City Council finds it vitally important that individuals work together to decrease the widespread proliferation of COVID-19 among citizens of the City; and

WHEREAS, if COVID-19 continues to spread in the City and the County at its current rate, the number of persons relying on medical, pharmaceutical, and general cleaning supplies will increase, absenteeism will negatively impact the private and public sector work force, and the demand for medical facilities may exceed locally available resources; and

WHEREAS, the Centers for Disease Control and Prevention and DHEC advise the use of face coverings to slow the spread of COVID-19; and

WHEREAS, the Constitution of the State of South Carolina 1895, as amended (the “**Constitution**”), provides that “all laws concerning local government shall be liberally construed in their favor [and] [p]owers, duties and responsibilities granted local government subdivisions by this Constitution and by law shall include those fairly implied and not prohibited by this Constitution.” See S.C. Const. Art. VIII, Sect. 17; and

WHEREAS, the City is expressly empowered pursuant to Section 5-7-30 of the South Carolina Code of Laws 1976, as amended, to “enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State, including the exercise of powers in relation to roads, streets, markets, law enforcement, health, and order in the municipality or respecting any subject which appears to it necessary and proper for the security, general welfare,

and convenience of the municipality or for preserving health, peace, order, and good government in it . . . ”; and

WHEREAS, in construing Section 5-7-30, the South Carolina Supreme Court has previously held that “[m]unicipalities are granted broad police powers to enact ordinances with respect to any subject which appears necessary and proper for the security, general welfare and convenience of the municipality.” *Peterson Outdoor Advert. v. City of Myrtle Beach*, 327 S.C. 230, 234, 489 S.E.2d 630, 632 (1997); *see also Town of Hilton Head Island v. Fine Liquors, Ltd.*, 302 S.C. 550, 553, 397 S.E.2d 662, 664 (1990); and

WHEREAS, in the absence of express preemption, “[w]here the General Assembly specifically recognizes a local government’s authority to enact local laws in the same field, the statutory scheme does not evidence legislative intent to occupy the entire field of regulation.” *Sandlands*, 394 S.C. at 466, 716 S.E.2d at 288 (2011); and

WHEREAS, in recent cases construing preemption in the State, the South Carolina Supreme Court has stated:

- (1) “An ordinance is preempted under implied field preemption when the state statutory scheme so thoroughly and pervasively covers the subject as to occupy the field or when the subject mandates statewide uniformity.” *Aakjer v. City of Myrtle Beach*, 388 S.C. 129, 133, 694 S.E.2d 213, 215 (2010);
- (2) “To preempt an entire field, an act must make manifest a legislative intent that no other enactment may touch upon the subject in any way.” *S.C. State Ports Auth. v. Jasper Cty.*, 368 S.C. 388, 395, 629 S.E.2d 624, 627 (2006);
- (3) When “the General Assembly specifically recognizes a local government’s authority to enact local laws in the same field, the statutory scheme does not evidence legislative intent to occupy the entire field of regulation.” *Sandlands C & D, LLC v. Cty. of Horry*, 394 S.C. 451, 466, 716 S.E.2d 280, 288 (2011); and

WHEREAS, in consideration of City’s Home Rule powers, and the preemption cases recited above (which included a consideration of the provisions of Section 16-7-110 of the Code of Laws of South Carolina 1976, as amended), the South Carolina Attorney General, Alan Wilson, released a public statement on June 24, 2020 regarding the legality and validity of municipal ordinances requiring the wearing of masks wherein he publicly stated that “yes, a city can pass this type of ordinance”; and

WHEREAS, in light of the foregoing, to include the police powers of the City and the absence of State laws preempting the subject of this Ordinance, City Council finds it proper, necessary, and essential to enact this emergency ordinance to require face coverings be worn by persons when interacting in public spaces in the City in order to meet the public health crisis facing the City; and

WHEREAS, any exemptions or waivers from the application of this Ordinance have been carefully considered by Council and have been specifically designed in consideration of the need

to balance the protection of public health against the limits of the City’s police powers under Home Rule; and

WHEREAS, it is hereby determined that the continuation and spread of COVID-19 represents a public emergency affecting life, health, and safety, and therefore, it is proper, necessary, and essential to enact this Ordinance as an emergency ordinance.

NOW THEREFORE, be it hereby ordained in this emergency meeting of the City Council, as follows:

Section 1. Recitals.

Each finding or statement of fact set forth in the recitals hereinabove has been carefully examined and has been found to be in all respects true and correct.

Section 2. Requirement of Face Coverings.

A. For the purposes of Sections 2, 3 and 5 of this Ordinance, the following definitions shall apply:

(i) “City Property” shall mean any facilities owned, operated or maintained by the City.

(ii) “Control Person” shall be defined as any individual associated with a business who has the control or authority and ability to enforce the requirements of the Ordinance within the business, such as an owner, manager or supervisor. The term “Control Person” may also include an employee or other designee that is present at the business but does not have the title of manager, supervisor, etc. but has the authority and ability to ensure that the requirements of this Ordinance are met while the business is open to the public.

(iii) “Exempt Establishment” any Retail Establishment or Foodservice Establishment that applies for a waiver of the Face Covering requirement under the provisions of Section 2(F) below. Exempt Establishment does not include any Essential Establishment.

(iv) “Essential Establishment” means any grocery store, pharmacy, personal hygiene facility or medical facility.

(v) “Face Covering” shall mean a cloth, fabric, textile, or impervious material without holes, that covers both the mouth and nose, including but not limited to surgical masks, respirators, face shields, handmade masks, bandanas, neck gaiters, scarves or wraps.

(vi) “Foodservice Establishment” means any establishment within the City that sells prepared food on a dine-in, delivery, carry-out, or drive-through basis. Foodservice Establishment additionally includes bars, taverns and all other facilities that serve alcoholic beverages by the drink.

(vii) “Notice” means a poster, placard or notification, which shall be at least 8”x11”, placed in a conspicuous place within or without each Exempt Establishment wherein it is explicitly stated that Face Coverings are not required to be worn and the business constitutes an Exempt Establishment under this Ordinance.

(viii) “Retail Establishment” means any retail business, organization, establishment, or facility open to the public within the City, including without limitation: (a) grocery stores; (b) pharmacies; (c) commercial stores engaged in the retail sale of goods or services to the public including without limitation sporting goods stores; furniture and home-furnishings stores; clothing, shoe, and clothing-accessory stores; jewelry, luggage, and leather goods stores; department stores; hardware and home-improvement stores; book, craft, and music stores; florists and flower stores; and all other stores that sell supplies for household consumption or use; (d) alcoholic beverage stores; (e) laundromats; (f) personal hygiene facilities (such as hair salons, nail salons, beauty parlors, barbers and similar personal-care establishments); and (g) medical facilities.

B. All natural persons entering a Foodservice Establishment, Retail Establishment or City Property must wear a Face Covering while inside such establishment or facility. A Foodservice Establishment, Retail Establishment or Control Person thereof shall not be responsible for enforcing the Face Covering requirement, but shall post conspicuous signage at all entrances informing its patrons of the requirements of this Section 2(B). Examples of appropriate signage shall be made available by the City or may be downloaded from the City’s website: www.westcolumbiasc.gov.

C. All Foodservice Establishments and Retail Establishments within the City must require every employee to wear a Face Covering at all times while having face to face interaction with the public or other employees or where social distancing of at least six feet cannot be observed at all times.

D. The provisions of Section 2(C) shall equally apply *mutatis mutandi* to all City employees.

E. Notwithstanding the foregoing provisions of this Section 2, a Face Covering shall not be required: (i) by any person who is unable to safely wear a Face Covering due to age or an underlying health condition, (ii) by any person who is physically unable to remove the Face Covering without the assistance of others; (iii) by all persons 10 years of age or under; (iv) all persons whose religious beliefs prevent them from wearing a Face Covering; (v) any person in a private or individual office; (vi) where it is not feasible or medically practical to wear a Face Covering, including persons receiving oral health services, persons swimming or engaging in athletic activities; (vii) for patrons of Foodservice Establishments while they are eating, drinking or smoking (where permitted); and (viii) by police officers, fire fighters and other first responders when not practical or engaged in a public safety matter of an emergency nature. No person shall be required to disclose any information or provide any actual evidence as to their qualification for any exemption under this Section 2(E).

F. Upon written request to the City, a Control Person for any Foodservice Establishment or Retail Establishment may request a waiver of the Face Covering requirements in Section 2(B) or (C), or both (as applicable); however, no Essential Facility shall be eligible for any waiver of the provisions of this Ordinance. Waiver forms shall be made available from the City and shall be submitted for registration and filing with the City. Copies of waiver forms and registration shall be completed via the City's website: www.westcolumbiasc.gov. Upon successful registration, each waiver applicant shall be granted a waiver as to their respective establishment from the provisions of the Face Coverings requirements in Section 2(B) or (C), or both (as applicable). Upon receipt of any such request, the City shall register the respective Exempt Establishment into City's registration books and thereafter issue documentation as to the Exempt Establishment's enrollment in the waiver program; such document shall include copies of the Notice so as to properly advise the public as to the Exempt Establishment's exemption from the Face Covering requirements in Section 2(B) or (C), or both (as applicable). Failure to properly post the Notice shall vitiate the applicability of the waiver and the enrollment of the Exempt Establishment in the exemption registry. Any Exempt Establishment that is withdrawn from the exemption registry for failure properly post the Notice shall be required to reapply under the provisions of this Section 2(F) in order to be re-enrolled in the exemption registry.

Section 3. Civil Infraction.

A. Any person, including any Control Person on behalf of a Retail Establishment or a Foodservice Establishment, who fails to comply with Section 2 of this Ordinance shall be guilty of a civil infraction, punishable by a fine of not more than \$25.00 for each violation.

B. Each day of a continuing violation of this Ordinance shall be considered a separate and distinct offense.

C. In addition to the fines established by this section, repeated violations of this Ordinance by a Foodservice Establishment or Retail Establishment subject to this Ordinance may, subject to all procedural protections set forth in the City's code of ordinances, result in the suspension or revocation of any occupancy permit or business license issued to any business where the repeated violations occurred.

D. Repeated violations of this Ordinance are additionally hereby declared to be a public nuisance, which may be abated by the City by restraining order, preliminary and permanent injunction, or other means provided for by the laws of this State. The foregoing notwithstanding, every effort shall be made to bring a Foodservice Establishment or Retail Establishment into voluntary compliance with the terms of this Ordinance prior to the issuance of any citation.

Section 4. Suspension of Contrary Local Provisions. During the pendency of this Ordinance, any ordinance, resolution, policy, or bylaw of the City that conflicts with the provisions hereof shall be and is hereby suspended and superseded.

Section 5. Encouragement; Recommendation. In order to reduce the rate of COVID-19 transmission in the City, it is strongly recommended and encouraged that: (i) every person wear a Face Covering in all situations where interactions with the public is necessary or probable and such person is unable to maintain a minimum distance of six feet from other persons at all times;

(ii) all persons follow guidelines and recommendations promulgated by the Centers for Disease Control and Prevention (CDC); (iii) all Foodservice Establishments adhere to the guidelines the Palmetto Priority restaurant initiative; and (iv) any service or utility providers require Face Coverings within any personal residence of any customer within the City.

Section 6. Effective Date; Expiration. The provisions hereof shall be effective as of 6:00 a.m. on Friday, July 10, 2020 and shall expire on the sixty-first day following the effective date hereof.

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