EMERGENCY ORDINANCE 2020-06 A

AN EMERGENCY ORDINANCE OF THE CITY OF MARY ESTHER, FLORIDA, 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 FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of Mary Esther finds that Novel Coronavirus Disease 2019 (COVID-19) presents a danger to the health, safety, and welfare of the public; and

WHEREAS, COVID-19 is a severe acute respiratory illness that can spread among humans through respiratory transmission and causes symptoms similar to those of influenza 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 on May 8, 2020 the Governor issued Executive Order No. 20-114 which extended the declaration of a State of Emergency for an additional period of sixty (60) days, and on July 7, 2020, the Governor issued Executive Order No. 20-166, which extended the declaration of a State of Emergency an additional sixty (60) days, which declaration remains in effect through September 5, 2020; and

WHEREAS, between March 17, 2020 and the date hereof, the Governor issued several Executive Orders placing numerous restrictions on individuals and businesses in response to the statewide threat of the spread of COVID-19; 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, mitigating the effects of COVID-19 and protecting the health of its citizens and visitors is a high priority of the City of Mary Esther; and

WHEREAS, the Reopen Florida Task Force, in its Report to the Governor, noted that there is currently no vaccine to prevent contraction of COVID-19 and that all Floridians and visitors to Florida 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 United States Centers for Disease Control and Prevention ("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, Executive Order 20-139, among other things, allows City Council and board meetings to be conducted using communications media technology; 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 "it'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, 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 increasing sources producing and selling coverings; 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, on July 16, 2020, Dr. Karen Chapman, Director of Florida Department of Health in Okaloosa County, set forth in an email noting a increase in COVID-19 cases in Okaloosa County and urging as a “last line of defense” that more than urging the use of face coverings and stating “If we have any hope of getting this virus under control in our county before the start of influenza season, the time is now for Okaloosa County leadership to act forcefully on the issue of face coverings.”; and

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

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARY ESTHER, FLORIDA:

Section 1. Incorporation of Recitals as Legislative Findings.

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

Section 2. Definitions.

"Business establishment" shall mean any location where members of the public are regularly invited inside of a building to conduct business, service, governmental, social, recreational or not-for-profit activities. This definition shall specifically include but shall not be limited to retail, office, professional or service establishments, restaurants, fitness centers, bars, places of assembly, governmental buildings and public lodging establishments.

"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.

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

Section 3. Mandatory Requirements.
A. An individual in a business establishment must wear a face covering while in that business establishment.

B. The requirement in this section does not apply to:

   i. A child under the age of 6.

   ii. Persons who have trouble breathing due to a chronic pre-existing condition or individuals with a documented or demonstrable medical problem. It is the intent of this provision that those individuals who cannot tolerate a facial covering for a medical, sensory or any other condition which makes it difficult for them to utilize a face covering and function in public are not required to wear one.

   iii. Public safety, fire, and other life safety and health care personnel, as their personal protective equipment requirements will be governed by their respective agencies.

   iv. Persons exercising while observing at least 6 feet of distancing from another person.

   v. 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.

   vi. 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.

Section 4. Penalties and Enforcement.

A. 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 2(B) 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.

B. The penalty for a violation of this Emergency Ordinance is:

   i. For a first offense, a fine of $50.00.

   ii. For a second offense, a fine of $125.00.
iii. For a third and each subsequent offense, a fine of $250.00.

iv. All other remedies available at law or equity, including injunction, remain available to the City, even after issuance of a citation.

Section 5. Applicability and Conflict.

This Emergency Ordinance shall apply within the city limits of Mary Esther, Florida and establish minimum standards, though Okaloosa County, Okaloosa County School District, the State of Florida, and Federal agencies may adopt more stringent rules and procedures regarding face covering requirements. All city 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 take effect at 12:01 a.m. on Friday, July 31, 2020. Pursuant to Section 166.041(3)(b), Florida Statutes, this Ordinance has been adopted by the affirmative vote of Four (4) members of the City Council and shall sunset or expire sixty (60) days after adoption, unless otherwise extended or repealed prior to such expiration date.

PASSED AND DULLY ADOPTED, BY THE CITY COUNCIL OF THE CITY OF MARY ESTHER, FLORIDA, with a quorum present and voting, this 22nd day of July 2020.

By: ____________________________
    Margaret McLemore, Mayor

Attest:

Dana L.S. Williams, MMC
City Clerk

Approved as to Form

Hayward Dykes, Jr., City Attorney

Ord. 2020-06
Emergency - Mandatory Face Covering