Substitute Ordinance No. 5751

Substitute Ordinance Amending the Memphis Code of Ordinances Relative to Requirements for Persons to wear facial coverings or masks while present in businesses and public places within the City of Memphis during public health emergencies

WHEREAS, the transmission of the COVID-19 virus continues to threaten our citizens despite the City's efforts to slow the spread of the virus over the past two (2) months;

WHEREAS, as businesses and operations reopen in the City, it is critical that Memphians remain vigilant to protect themselves and their fellow Memphians;

WHEREAS, scientific evidence shows that a substantial number of individuals with the COVID-19 virus are asymptomatic and that individuals who contract the virus may still transmit the virus to others before ever showing symptoms by speaking, coughing, or sneezing.

WHEREAS, employees of businesses that reopen are put in a vulnerable position when patrons come in without a face covering;

WHEREAS, the Council desires to make sure workers are safe as they interact with customers.

WHEREAS, science shows that face coverings are one of the most effective means of reducing the spread of the COVID-19 virus;

WHEREAS, the risks of inaction are high and likely fatal for elderly persons and individuals with serious underlying health conditions, including high blood pressure, chronic lung disease, diabetes, obesity, asthma, and those whose immune system is compromised such as by chemotherapy for cancer and other conditions requiring such therapy;

WHEREAS, the risks are particularly high for African American citizens. As of May 27, 2020, there was a cumulative total of 4,703 confirmed cases of infection by the COVID-19 virus and 102 deaths in Shelby County, of which over 65% of the confirmed cases and over 68% of deaths were African-American citizens.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS that the various sections of this ordinance shall upon becoming effective as provided by law shall be and become a new Chapter under Title 9 of the Code of Ordinances and shall read as follows:

Section 1: SHORT TITLE

1.01 This Ordinance shall be known as the "Face Covering/Mask Ordinance."

Section 2: LEGISLATIVE FINDINGS AND INTENT

2.01 Tennessee General Assembly has declared the State's policy that safeguarding the life and property of its citizens is an innate responsibility of the governing body of each political subdivision of the state;

2.02 The Council, as the governing body of the City, does hereby find, declare and conclude that it has the power and duty under the City's Charter:

1) to pass all laws to preserve the health of the City;
2) to prevent the introduction of contagious diseases within the City; and
3) to define, prevent, remove and cause to be abated nuisances within the City;

2.03 The Council, as the governing body of the City, does hereby further find, declare and conclude that it has the power and authority under State statutes to take whatever prudent action is necessary to ensure the health,

safety, and welfare of the community during a declared state of emergency and that this Ordinance is adopted pursuant to State policy and the authority granted it under State statutes and the City's Charter;

2.04 The Council does hereby find and declare that this Ordinance is based on evidence of increasing occurrence of COVID-19 within the City, the State of Tennessee, and the United States of America and on scientific evidence, and best practices regarding the most effective approaches to slow the transmission of communicable diseases generally and COVID-19 specifically;

2.05 The Council does hereby find and declare that this Ordinance is also issued in light of the existence, as of May 27, 2020, of a cumulative total of 4,703 confirmed cases of infection by the COVID-19 virus and 102 deaths in Shelby County, of which over 65% of the confirmed cases and over 68% of deaths are African-American citizens;

2.06 It is the intent of this Ordinance:

A. To help reduce the spread of the COVID-19 virus and mitigate the impact of the virus on members of the public and on the delivery of critical healthcare services to those in need. All provisions of this Ordinance must be interpreted to effectuate this intent.

B. To ensure that all people who are visiting or working at Essential Businesses and all people who are seeking care at healthcare facilities or engaged in certain types of public transit or transportation with others wear a Face Covering to reduce the likelihood that they may transmit or receive the COVID-19 virus.

C. To ensure that people who work for or seek services from entities engaged in Essential Infrastructure work, Minimum Basic Operations, or Essential Government Functions also wear a Face Covering when they are in close proximity to others.

D. To create environments where employees, customers and members of the public may feel safe in visiting and/or working

in Essential Businesses, Essential Government Functions and Healthcare Operations.

Section 3: REQUIRMENTS FOR WEARING FACE COVERINGS

3.01 SPECIFIC REQUIREMENT FOR WEARING FACE COVERINGS. All members of the public, except as specifically exempted herein, are required to wear a Face Covering outside their home or other place they reside in the following specific situations:

1) When they are inside of, or in line to enter, any Essential Business including, but not limited to, grocery stores, convenience stores, supermarkets, laundromats, and restaurants;
2) When they are inside of, or in line to enter, any Non-Essential Business as defined in this Ordinance.
3) When they are inside or at any location or facility engaging in seeking or receiving Essential Government Functions, including but not limited to City Hall or other City buildings and facilities;
4) When they are at the entrance to and inside elevators in all public and private buildings;
5) When they are engaged in Essential Infrastructure work;
6) When they are obtaining services at Healthcare Operations—including hospitals, clinics, COVID-19 testing locations, dentists, pharmacies, blood banks and blood drives, other healthcare facilities, mental health providers, or facilities providing veterinary care and similar healthcare services for animals—unless directed otherwise by an employee or worker at the Healthcare Operation; or
7) When they are waiting for or riding on public transportation (including without limitation any bus, MATA, street car or paratransit or are in a taxi, private car service, or ride-sharing vehicle.
8) Each driver or operator of any public transportation or paratransit vehicle, taxi, or private car service or ride-sharing vehicle must wear a Face Covering while driving or operating such vehicle, regardless of whether a member of the public is in the vehicle, due to the need to reduce the spread of respirator}' droplets in the vehicle at all times.

9) All Essential Businesses, Non-Essential Businesses, as well as entities and organizations with workers engaged in Essential Infrastructure work, or Essential Government Functions (except for Healthcare Operations, which are subject to their own regulation regarding specified face coverings), must:

a) Require their employees, contractors, owners, and volunteers to wear a Face Covering at the workplace and when performing work off-site any time the employee, contractor, owner, or volunteer is:

i. interacting in person with any member of the public;

ii. working in any space visited by members of the public, such as by way of example and without limitation, reception areas, grocery' store or pharmacy aisles, service counters, public restrooms, cashier and checkout areas, waiting rooms, service areas, and other spaces used to interact with the public, regardless of whether anyone from the public is present at the time;

iii. working in any space where food is prepared or packaged for sale or distribution to others; working in or walking through common areas such as hallways, stairways, elevators, and parking facilities; or

iv. in any room or enclosed area when other people (except for members of the person's own household or residence) are present.

v. Take reasonable measures, such as posting signs, to remind their customers and the public of the requirement that they wear a Face Covering while inside of or waiting in line to enter the business, facility, or location. Essential Businesses and entities or organizations that engaged in Essential Infrastructure work must take all reasonable steps to prohibit any member of the public who is not wearing a Face Covering from entering and must not serve that person if those efforts are unsuccessful.

3.02 Reusable face coverings or masks must remain clean and sanitary via regular washing and daily disinfecting.

Section 4: EXEMPTIONS FROM REQUIRMENTS FOR WEARING FACE COVERINGS

4.01 A Face Covering is not required, but is strongly encouraged, when a person is not in any of the specific situations identified in Section. 3.01.

4.02 A Face Covering is not required when a person is in a personal office (a single room) when others outside of that person's household are not present as long as the public does not regularly visit the room. By way of example and without limitation, a construction worker, plumber, bank manager, accountant, or bike repair person is not required to wear a Face Covering if that individual is alone and in a space not regularly visited by the public, but that individual must put on a Face Covering when coworkers are nearby, when being visited by a client/customer, and anywhere members of the public or other coworkers are regularly present.

4.03 A Face Covering is not required after a person has been seated in a restaurant or bar or similar facility, but is strongly recommended when a person is ordering food or drink or otherwise interacting with workers or other customers at the restaurant or bar or similar facility.

4.04 Any child aged two years or less must not wear a Face Covering because of the risk of suffocation. This Ordinance does not require that any child aged twelve years or less wear a Face Covering. Parents and caregivers must supervise use of Face Coverings by children to avoid misuse.

4.05 Wearing a Face Covering is recommended but not required while engaged in outdoor recreation such as walking, hiking, bicycling, or running. But each person engaged in such activity must comply with social distancing requirements including maintaining at least six feet of separation from all other people to the greatest extent possible. Additionally, it is recommended that each person engaged in such activity bring a Face Covering and wear that Face Covering in circumstances where it is difficult to maintain compliance with Social Distancing Requirements and that they carry the

Face Covering in a readily accessible location, such as around the person's neck or in a pocket, for such use.

4.06 Because running or bicycling causes people to more forcefully expel airborne particles, making the usual minimum 6 feet distance less adequate, runners and cyclists must take steps to avoid exposing others to those particles, which include the following measures: wearing a Face Covering when possible; crossing the street when running to avoid sidewalks with pedestrians; slowing down and moving to the side when unable to leave the sidewalk and nearing other people; never spitting; and avoiding running or cycling directly in front of or behind another runner or cyclist who is not in the same household.

4.07 This Ordinance does not require any person to wear a Face Covering while driving in a motor vehicle, but is highly recommended if other persons who are not part of the driver's family are present.

4.08 A Face Covering is also not required by this Ordinance to be worn by a particular individual if the person can show either: (1) a medical professional has advised that wearing a Face Covering may pose a risk to the person wearing the mask for health-related reasons; or (2) wearing a Face Covering would create a risk to the person related to their work as determined by local, state, or federal regulators or workplace safety guidelines; or because the person suffers from a Medical Condition that prevents that person from wearing a Face Covering.

4.09 A Face Covering should also not be used by anyone who has trouble breathing or is unconscious, incapacitated, or otherwise unable to remove the Face Covering without assistance.

Section 5: VIOLATIONS

5.01 The Council does hereby expressly find and declare that this Ordinance is necessary to slow the rate of spread of COVID-19 in the City, especially among its most vulnerable citizens. Failure to comply with any of the provisions of this Ordinance constitutes an imminent threat and

immediate menace to public health, especially and therefore is declared to be a public nuisance, which is a Class C Misdemeanor that is punishable in the manner set forth herein or is subject to other extraordinary legal remedies available to the City to eliminate and/or abate public nuisances.

Section 6: ADMINISTRATION AND ENFORCEMENT

6.01 Pursuant to the City's Charter, the Mayor, by virtue of his office, is the Chief Executive Officer of the City government, and each and every department thereof, and as such, shall have under his control and be charged with the duty of supervising and compelling the performance of duties by all other officers and employees. The Mayor is required to see that provisions of the City's Charter and Ordinances are obeyed and enforced.

6.02 Notwithstanding any City Ordinance to the contrary, whenever any emergency occurs, or any rare or unusual disease appears, or when any disease becomes unduly prevalent, the Mayor, in consultation with a medical professional selected by him, shall have the power to employ any measures necessary for the protection of the public health; and the Mayor shall have the power, by proclamation, to establish quarantine and contact tracing measures and to promulgate such rules and regulations as may be necessary to combat such emergencies, including rules and regulations for persons residing in, entering or leaving the city, and the regulation of property, and he or she shall have power to make such expenditures as may be necessary for such purposes.

6.03 The Mayor shall be authorized to appoint his officers, assistants and employees to enforce the rules and regulations promulgated by the Mayor under the provisions of this Ordinance. Any person who violates any such regulation, or who fails to carry out any lawful order of the Mayor or his designee(s) in such emergencies, shall be guilty of a misdemeanor.

6.04 Whenever the Mayor deems it necessary to carry out the provisions of this Ordinance, the Mayor shall have the power to call upon the Chief of police services for a detail of officers, and the director of police shall furnish

such officers, and the officers so detailed shall act under the direction of the Mayor for the purpose of carrying out the provisions of this Ordinance or any proclamation or regulation issued by the Mayor to abate any public health nuisances and may issue citations for violations hereof.

6.05 The Municipal Courts of the City shall have jurisdiction over any citations issued for violations of this ordinance.

6.06 The fines or penalties that may be assessed by the City's Municipal Courts against individual violators shall be as follows:

1) First offense – warning
2) There shall be no monetary fines or criminal penalties assessed for violations of this Ordinance by individuals,

6.07 Chapter 11, Section 11-24 of the Memphis Code of Ordinances is hereby amended to add a new subsection C, which shall provide that court fees for violation of the Face Coverings/Mask Ordinance by individuals shall not exceed twenty dollars ($20.00) per violation, which may be waived upon completion of the community service requirement.

6.08 In order to remedy continuing violations of this Ordinance the Mayor shall be authorized to assess civil penalties against any business or entity after such business or entity has been issued a warning for violating Section 3.01 of this Ordinance or any Health Directive on three(3) separate occasions in an amount of $100 per successive violation and the Mayor shall also be authorized to seek restraining orders or injunctive relief in courts of appropriate jurisdiction to abate any continuing health nuisances that have occurred and are continuing in violation of Section 3.01 of this Ordinance or any Health Directive.

6.09 The Council shall be expressly authorized to modify by resolution the fines and penalties required by this Ordinance.

6.10 The Mayor shall be authorized to create, operate and/or contract with non-profit organizations, who are providing community services to the public during an infectious disease pandemic to coordinate and report community services performed by violators of this Ordinance.

6.11 The Mayor is requested to develop and post on the City's website a sample sign to be used by Essential Business and Governmental Operations for notifying customers and the public of the need to comply with the requirements of this Ordinance for wearing face coverings.

6.12 The Mayor is authorized to use any available federal COVID-19 funding for implementation of this Ordinance, including but not limited to compensation of inspectors and other employees whose services are substantially dedicated to mitigation of the COVID-19 public health emergency as provided in this Ordinance or for the provision of masks to small businesses, public transportation vehicles and for use by visitors to public buildings and facilities. The Mayor is authorized to coordinate with the Shelby County Health Department in the use and deployment of City personnel assigned to mitigation of the COVID-19 public health emergency hereunder.

6.13 The Mayor is authorized to establish a system for employees of Essential and Non-Essential Businesses to report the failure of an employer to provide masks for their work and for members of the public to report violations of this Ordinance, any executive orders or Health Directives relating to the operations of businesses and activities during an infectious disease pandemic, which may include telephone hot-lines and/or internet systems.

Section 7: MISCELLANEOUS

7.01 This Ordinance shall remain in effect only during a declared public health emergency. Except as provided in this Ordinance, all Health Directives issued by the Shelby County Health Department and Health Officer shall be obeyed and observed by all persons and businesses.

Section 8: DEFINITIONS

8.02 "Essential Businesses" are:

i. Healthcare Operations and businesses that operate, maintain, or repair Essential Infrastructure;

ii. Grocery stores, certified farmers' markets, farm and produce stands, supermarkets, food banks, convenience stores, and other establishments

engaged in the retail sale of unprepared food, canned food, dry goods, non-alcoholic beverages, fresh fruits and vegetables, pet supply, fresh meats, fish, and poultry, as well as hygienic products and household consumer products necessary for personal hygiene or the habitability, sanitation, or operation of residences. The businesses included in this subparagraph (ii) include establishments that sell multiple categories of products provided that they sell a significant amount of essential products identified in this subparagraph, such as liquor stores that also sell a significant amount of food;

iii. Food cultivation, including farming, livestock, and fishing;

iv. Businesses that provide food, shelter, and social services, and other necessities of life for economically disadvantaged or otherwise needy individuals;

v. Construction,

Affordable housing that is or will be income-restricted, including multi-unit or mixed-use developments containing at least 10% income-restricted units;

Public works projects;

Shelters and temporary housing, but not including hotels or motels;

Projects immediately necessary to provide critical noncommercial services to individuals experiencing homelessness, elderly persons, persons who are economically disadvantaged, and persons with special needs;

Construction or repair necessary to ensure that residences and buildings containing Essential Businesses are safe, sanitary, or habitable to the extent such construction or repair cannot reasonably be delayed;

vi. Newspapers, television, radio, and other media services;

vii. Gas stations and auto-supply, auto-repair (including, but not limited to, for cars, trucks, motorcycles and motorized scooters), and automotive dealerships;

viii. Bicycle repair and supply shops;

ix. Banks and related financial institutions;

x. Service providers that enable residential transactions (including rentals, leases, and home sales), including, but not limited to, real estate agents, escrow agents, notaries, and title companies

xi. Hardware stores;

xii. Plumbers, electricians, exterminators, and other service providers who provide services that are necessary to maintaining the habitability, sanitation, and operation of residences and Essential Businesses, but not for cosmetic or other purposes;

xiii. Arborists, landscapers, gardeners, and similar service professionals, but only to the limited extent necessary to maintain the habitability, sanitation, operation of businesses or residences, or the safety of residents, employees, or the public (such as fire safety or tree trimming to prevent a dangerous condition);

xiv. Businesses providing mailing and shipping services, including post office boxes;

xv. Educational institutions—including public and private K-12 schools, colleges, and universities—

xvi. Laundromats, drycleaners, and laundry service providers;

xvii. Restaurants and other facilities that prepare and serve food, including schools and other entities that typically provide free food services to students or members of the public, but only for delivery or carry out, unless authorized for in person service pursuant to a state, county or city back-to-business order.

xviii Businesses that supply other Essential Businesses with the support or supplies necessary to operate.

xx. Businesses that have the primary function of shipping or delivering groceries, food, or other goods directly to residences or businesses. This exemption shall not be used to allow for manufacturing or assembly of non-essential products or for other functions besides those necessary to the delivery operation;

xxi. Airlines, taxis, rental car companies, rideshare services (including shared bicycles and scooters), and other private transportation providers providing transportation services necessary for Essential Activities;

xxii. Home-based care for seniors, adults, children, and pets;

xxiii. Residential facilities and shelters for seniors, adults, and children;

xxiv. Professional services, such as legal, notary, or accounting services;

xxv. Services to assist individuals in finding employment with Essential Businesses;

xxvi. Moving services that facilitate residential or commercial moves;

xxvii. Childcare facilities providing services that enable owners, employees, volunteers, and contractors for Essential Businesses or Essential Governmental Functions to work as permitted. Children of owners, employees, volunteers, and contractors who are not exempt under this Order may not attend childcare facilities.

8.02 "Essential Government Functions" means all services needed to ensure the continuing operation of the government agencies and provide for the health, safety and welfare of the public.

8.03 "Essential Infrastructure," means airports, utilities (including water, sewer, gas, and electrical), oil refining, roads and highways, public transportation, solid waste facilities (including collection, removal, disposal, and processing facilities), cemeteries, mortuaries, crematoriums, and telecommunications systems (including the provision of essential global,

national, and local infrastructure for internet, computing services, business infrastructure, communications, and web-based services).

8.04 "Health Conditions" means health conditions, including but not limited to, high blood pressure, chronic lung disease, diabetes, obesity, asthma, and those whose immune system is compromised such as by chemotherapy for cancer and other conditions requiring such therapy.

8.05 "Non-Essential Businesses" means all brick and mortar retail businesses not otherwise covered by this Ordinance that are engaged in the sale of goods, products and services to the public, in which ten (10) or more workers are working.

Section 9. This Ordinance is declared to be remedial in nature to mitigate the spread of infectious diseases in the City. To the extent that this ordinance is in conflict with other ordinances of the City of Memphis, this ordinance shall supersede the others until the conflicting ordinance is amended or repealed.

Section 10. The provisions of this Ordinance are hereby severable. If any of these sections, provisions, sentences, clauses, phrases or parts are held unconstitutional or void, the remainder of this Ordinance shall continue in full force and effect.

Section 11. This Ordinance shall take effect from and after the date it shall have been passed by the City Council, signed by the Chair of the Council, certified and delivered to the office of the Mayor in writing by the Comptroller and become effective as otherwise provided by law.

SPONSORS: Dr. Jeff Warren
Michalyn Easter-Thomas

Patrice J. Robinson

Chairwoman

THE FOREGOING ORDINANCE
5751 PASSED
1st Reading 05-05-2020
2nd Reading 05-19-2020
3rd Reading 06-16-2020
Approved Patricia J. Robertson
Chairman of Council

Date Signed: 06/19/2020

APPROVED:
Mayor, City of Memphis

Date Signed: 6/25/20

I hereby certify that the foregoing is a true copy,and said document was adopted by the Council of the City of Memphis as above indicated and approved by the Mayor.

Valerie C. Snipes
Comptroller