

CITY OF MEMPHIS

RECONVENE JUNE 16, 2020 REGULAR MEETING OF MEMPHIS CITY COUNCIL

Thursday, June 18, 2020, 3:30 p.m.

SUPPORTING DOCUMENTS

ITEM #	DESCRIPTION	PAGE #
50.	Substitute Ordinance amending the Memphis Code of Ordinance 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. Sponsored by Jeff Warren and Michalyn Easter-Thomas Adoption of Same Night Minutes	1

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;

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

- 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.

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

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 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

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;

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,