



CITY OF FOLLY BEACH

1st Reading: June 29, 2020
Amended: July 2, 2020

Introduced by: Mayor Goodwin and
Council Member Ray

No Second Reading per S.C. Code § 5-7-250 Date: July 2, 2020

ORDINANCE 11-20 (FIRST AMENDMENT)

AN EMERGENCY ORDINANCE REQUIRING THAT FACE COVERINGS OR MASKS BE WORN IN PUBLIC IN THE CITY OF FOLLY BEACH. AMENDMENT: REQUIRING BUSINESSES TO END MUSIC AND EVENTS THAT DRAW A CROWD AT 9:00 P.M., ENDING SPECIAL EVENTS, AND REAFFIRMING EMERGENCY POWERS OF THE CITY.

The City Council of Folly Beach, South Carolina, duly assembled, hereby ordains that the following Emergency Ordinance be adopted pursuant to South Carolina Code § 5-7-250:

WHEREAS, it is well recognized that SARS-CoV-2, the virus that causes the disease COVID-19, presents a public health concern that requires extraordinary protective measures and vigilance; and

WHEREAS, on March 11, 2020, the World Health Organization (WHO) declared COVID-19 a pandemic; and

WHEREAS, on March 13, 2020, the President of the United States has declared a National Emergency for the United States and its territories in an effort to reduce the spread of the virus; and

WHEREAS, the Centers for Disease Control (CDC) currently has a Level 3 travel advisory in place that covers the entire world, including the United States; and

WHEREAS, the Governor of South Carolina declared a State of Emergency on March 13, 2020, to enhance the State's response to the COVID-19 virus's impact on the State; and

WHEREAS, the Mayor of the City of Folly Beach declared a State of Emergency within the City on March 16, 2020, and his proclamation was adopted by City Council on March 20, 2020; and

WHEREAS, City Council adopted several versions of a prior Emergency Ordinance in the past three months, but most restrictions on citizens and visitors were lifted in early May, in accord with the actions of the State, the County, and most other municipalities also lifting most restrictions imposed to limit the spread of the pandemic; and

WHEREAS, since the lifting of restrictions, the State, County, and City has seen a resurgence in the spread of COVID-19; and

WHEREAS, as reported by the South Carolina Department of Health and Environmental Control (SCDHEC), as of June 29, 2020, the total number of confirmed cases in South Carolina is 34,546, with total possible cases of 246,757. In Charleston County, the total number of reported cases is 3,653 with total possible cases of 26,093. The City of Folly Beach has had 15 confirmed cases, with a total estimated cases of 107; and

WHEREAS, both South Carolina and Charleston County have had more new daily cases reported in the last week than ever reported previously. On June 19, 2020, South Carolina reported 1,159 new cases, more than ever previously reported. On June 21, 2020, Charleston County reported 214 new cases, more than ever previously reported; and

WHEREAS, many businesses located on Folly Beach have recently re-closed due to multiple employees testing positive for the virus; and

WHEREAS, citizens and visitors, particularly within the commercial district of the City and within its businesses, have had a low rate of mask usage and have infrequently engaged in voluntary social distancing and other actions designed to impede the social transmission of the virus; and

WHEREAS, the CDC and SCDHEC have repeatedly advised the use of cloth face coverings to slow the spread of COVID-19; and

WHEREAS, face coverings can decrease the spread of respiratory droplets from people, and evidence has grown, showing in numerous recent studies that the use of face coverings decreases the spread of COVID-19 within populations; and

WHEREAS, taking measures to control outbreaks minimizes the risk to the public, maintains the health and safety of the City's residents and visitors, and limits the spread of infection in our communities and within the healthcare delivery system; and

WHEREAS, Sections 5-7-30 (the "Home Rule Statute") and 5-7-250 of the South Carolina Code of Laws, as well as the Governor's Orders, all empower Council to enact emergency ordinances affecting life, health, or safety; and

WHEREAS, the South Carolina Attorney General on June 24, 2020 has issued an opinion that municipalities are authorized to issue ordinances requiring the public use of masks; and

WHEREAS, in light of the foregoing and in order to protect, preserve, and promote the general health, safety, and welfare and the peace and order of the community, the City is taking steps to try to protect its citizens, employees, and visitors from increased risk of exposure, City Council of the City of Folly Beach deems it proper and necessary to adopt this emergency ordinance;

NOW BE IT THEREFORE ORDAINED that the following emergency procedures are hereby adopted and to remain in effect until August 25, 2020, subject to termination or extension by Council:

1. Council and the Mayor formally declare a State of Emergency due to a resurgence in known cases of COVID-19 within the City and surrounding areas. Council also confirms that the Mayor, or the Mayor Pro Tempore in his absence, can exercise the emergency powers granted to the Mayor pursuant to City of Folly Beach Ordinance § 35.05.

2. At the discretion of the Mayor, City Hall is closed and moved to a virtual, phone, and dropbox operation until further notice. The Mayor has discretion to open City Hall to transactions that are deemed safe.

3. City Council members and staff will be authorized during this State of Emergency to attend meetings of Council, boards, and committees via teleconference at their discretion.

4. The public will not be allowed to attend Council, board, or committee meetings, or any other City meetings, in person. Meetings will still be broadcast. Measures will be taken to allow the public to submit comments prior to any meeting by emails, which will be included in the public record of the meeting.

5. All deadlines imposed by City Ordinance or rule, applicable to the municipality or any applicant, shall be suspended, during this temporary period.

6. The City Administrator is authorized to develop and enact a plan in order to ensure continuity in the delivery of government services in light of the COVID-19 outbreak.

7. The City Administrator is authorized to cancel and revoke any special events permits issued prior to the date of this ordinance for events taking place until August 25, 2020.

MASK PROVISIONS

8. "Face Covering" or "mask" means a cloth, fabric, or other soft or permeable material, without vents or holes, that securely covers both the mouth and nose and remains affixed in place without the use of one's hands. Face Coverings include, but are not limited to, medical masks, N-95 respirators, face shields, scarves, handmade masks, bandanas, and neck gaiters such that they securely cover the person's nose and mouth.

9. Every person working, living, visiting, or doing business in the City of Folly Beach is required to wear a Face Covering while in any indoor or outdoor public place. This includes but is not limited to:

- a. Inside a building open to the public;
- b. Waiting to enter a building open to the public;

- c. Interacting with other people in outdoor spaces, including, but not limited to, curbside pickup, delivery, and service calls; and
- d. Walking in public where maintaining a distance of six (6) feet between other members of public at all times is not possible.

10. The following persons are exempted from the Face Covering requirement:

- a. Persons under the age of three years old; or
- b. Persons for whom a face covering would cause impairment due to an existing health condition or disability; or
- c. Persons in personal vehicles; or
- d. Persons while outside and while maintaining a minimum of six (6) feet from other people, other than members of their household, at all times; or
- e. Customers seated in a restaurant or bar while actively eating or drinking so long as they maintain a minimum of six (6) feet from other persons in the establishment, other than members of their households. The server and other front of the house staff must wear a Face Covering during these interactions; or
- f. Persons alone or with members of their household in an enclosed space.
- g. Persons acting in compliance with directions of law enforcement officers.

11. Businesses are responsible for enforcing this Emergency Ordinance and subject to the penalties included herein for violations occurring inside of their business, including outdoor areas, and in public areas wherein customers are dining, eating, or waiting to be served or seated.

- a. Businesses must require all employees to wear a Face Covering at all times.
- b. Businesses are required to post a notice in their business visible to customers entering the business or waiting to enter the business informing customers that the use of Face Coverings by customers and employees is mandated by law. Failure to post such a notice is a violation of this Emergency Ordinance.
- c. If a customer refuses to comply with the Emergency Ordinance and refuses to vacate the business and is not covered by one of the exemptions, the business shall promptly notify a Public Safety Officer or the Folly Beach Public Safety Dispatch office. If a business complies with this provision by posting the notice and informing Public Safety of a failure to comply, the business will not be in violation of this Emergency Ordinance as a result of the action of the noncomplying customer.
- d. If a customer is excluded from requiring a Face Covering pursuant to Section 10 of this Emergency Ordinance, the business may choose to offer curbside service, provide home delivery, or use some other reasonable measure to deliver its goods or services.
- e. Businesses are strongly encouraged to follow all CDC and industry guidelines on face coverings, social distancing, occupancy, and sanitation procedures. Businesses are encouraged to not hold any events that may create situations where

occupancy limits are exceeded, or social distancing is not possible. Art villages, farmers markets, and other vendor-based events are prohibited, unless a mobile vendor has been in place continuously for longer than 30 days, until the emergency ordinance expires.

f. During the duration of this emergency order, businesses shall not allow live entertainment, including but not limited to bands, DJ's, karaoke, bingo, trivia, contests, or other crowd drawing activity after 9:00pm. This is recognized as a temporary alteration of the City's existing noise ordinance, Section 131.32.

12. Any failure to comply with this Emergency Ordinance, including efforts to circumvent this ordinance, may be penalized a) as a civil infraction fine of \$100.00. Each day of a continuing violation shall be considered a separate and distinct offense. Such infractions may be issued by the City's licensing official, code enforcement officers, or public safety officers. Appeals of such infractions shall be heard by the City's hearing officer in accord with the provisions of Section 110.18, or b) in addition to the fines established in this section, repeated three (3) violations of this Emergency Ordinance by a licensed business may result in suspension or revocation of the business license pursuant to provisions of Section 110.17 of the City of Folly Beach Code of Ordinances, or c) as a violation of S.C. Code Section 16-7-10 (Illegal acts during state of emergency, or d) any other penalties provided by City or State law, including penalties granted pursuant to Executive Orders issued by the South Carolina Governor. In addition, the Governor has authorized cities to seek an injunction, mandamus, or other appropriate legal action in the courts of the State to enforce orders.

13. Citizens, businesses and visitors are reminded that the City remains specifically empowered by the Executive Orders issued by Governor Henry McMaster and by South Carolina law to enforce the following regulations:

- a. prohibit or disperse any congregation or gathering of people in any public area in groups of three (3) or more people, if any law enforcement official determines that such congregation or gathering of people poses, or could pose, a threat to public health. Executive Order No. 2020-13, Section 1.C. The failure to wear a mask 1) in any business when not seated in a chair and socially distanced, or 2) in any outdoor public area when not socially distanced, will be deemed a violation of Executive Order 2020-13, Section 1.C, and
- b. close in whole or in part any public beach access points if it is determined that such action is necessary to preserve or protect public health. Executive Order 2020-28, Section 1.A; and
- c. cite persons engaging in outdoor exercise or recreational activities, including on the beach, when no minimum of (6) distance feet is maintained during such activities between or all persons are not occupants of the same residence. Executive Order No. 2020-21, Section 1(E); and

d. charge persons for failing or refusing to comply with any lawful order or direction of any law enforcement officer, S.C. Code Section 16-7-10(A)(1)(c).

The violation of any of these provisions will result in criminal misdemeanor charges under state law and, upon conviction, a fine of \$100.00 or imprisonment of up to thirty days. S.C. Code Section 16-7-10(a).

14. During the term of this Emergency Ordinance, any ordinance, resolution, policy, or bylaw of the City that conflicts with the provisions hereof shall be and is hereby suspended and superseded.

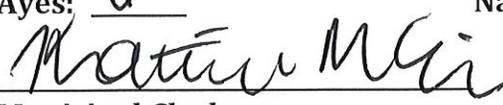
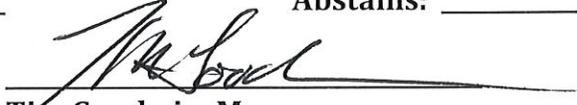
15. Should any provision, section, paragraph, sentence or word of this Emergency Ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences, or words of this Emergency Ordinance as hereby adopted shall remain in full force and effect.

16. This Emergency Ordinance shall take effect at noon the day after its adoption by City Council.

17. All measures taken herein are subject to modification, repeal, or additional restrictions as required by changes in the pandemic, including increased incidence, rate of spread in the Charleston region, and rate of compliance.

18. This emergency ordinance shall be terminated or extended by the issuance of another ordinance or shall automatically expire on August 25, 2020.

AMENDED AND ADOPTED this 2ND day of July 2020, at Folly Beach, South Carolina.

Ayes: 6 Nays: 0 Abstains:

Municipal Clerk 
Tim Goodwin, Mayor