

**ORDINANCE NO. 20- \_\_\_\_\_**

**AN EMERGENCY ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PINELLAS COUNTY, FLORIDA SETTING PUBLIC SAFETY REQUIREMENTS FOR INDOOR RETAIL BUSINESSES, BARS, AND RESTAURANTS; MANDATING THAT CERTAIN INDIVIDUALS WEAR A FACE COVERING IN PUBLIC IN CERTAIN CIRCUMSTANCES; ESTABLISHING EXCEPTIONS; ESTABLISHING MINIMUM COUNTYWIDE REQUIREMENTS AND PROHIBITIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE SUSPENSION OF ALL COUNTY ORDINANCES INCONSISTENT HEREWITH; PROVIDING FOR TRANSMITTAL TO THE SECRETARY OF STATE AND PROVIDING FOR AN EFFECTIVE DATE AND SUNSET.**

**WHEREAS**, according to the Centers for Disease Control (the “CDC”), Novel Coronavirus Disease 2019 (“COVID-19”) is a severe acute respiratory illness that can spread among humans through respiratory transmission; and

**WHEREAS**, on March 9, 2020, pursuant to executive order 20-52, the Governor of the state of Florida (“Governor”) declared a state of emergency throughout the state for the purpose of responding to COVID-19. That statewide emergency has been extended by subsequent order of the Governor (specifically, executive order 20-114), and it remains in effect at this time; and

**WHEREAS**, On March 13, 2020, the Pinellas County Board of Commissioners (“Board”) adopted resolution 20-16 to declare a seven-day state of emergency in Pinellas County, Florida, (the “County”) for the purpose of responding to COVID-19. That countywide state of emergency has been extended in seven-day increments by subsequent resolutions, and it remains in effect at this time; and

**WHEREAS**, the Governor has begun the process of relaxing restrictions on businesses and personal interactions pursuant orders implementing provisions of the Safe. Smart. Step-by-Step. Plan for Florida’s Recovery (“State Plan”); and

**WHEREAS**, testing for COVID-19 has recently shown dramatic increases in infection rates within Pinellas County – particularly within the 18-34 age group; and

**WHEREAS**, the Board finds that COVID-19 continues to present a danger to the health, safety, and welfare of the public; and

**WHEREAS**, the Centers for Disease Control (CDC) advises 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; and studies and evidence on infection control report that these droplets usually travel around 6 feet (about two arms lengths); and

**WHEREAS**, the CDC advises that a significant portion of individuals with coronavirus lack symptoms (“asymptomatic”) and that even those who eventually develop symptoms (“pre-symptomatic”) can transmit the virus to others before showing symptoms. This means that the virus can spread between people interacting in close proximity—for example, speaking, coughing, or sneezing—even if those people are not exhibiting symptoms; and

**WHEREAS**, the CDC recommends wearing cloth face coverings in public settings where other social distancing measures are difficult to maintain in order to slow the spread of the virus and help people who may have the virus and do not know it from transmitting it to others; and

**WHEREAS**, the State Plan currently discourages the gathering of groups of more than 50 people; and

**WHEREAS**, the percentage capacities of some Bars and Restaurants are both difficult to determine for the purposes of enforcement and may allow or invite the aggregation of people in excess of 50; and

**WHEREAS**, there have been several occurrences where many more than 50 people have been in very close proximity to each other within an enclosed Bar or Restaurant since Phase 2 of the State Plan was initiated; and

**WHEREAS**, the CDC does not recommend wearing cloth face covering for anyone who has trouble breathing, or is unconscious, incapacitated or otherwise unable to remove the mask without assistance; and

**WHEREAS**, the CDC recommends only simple cloth face coverings for the general population and not surgical masks or N-95 respirators because these are critical supplies that must continue to be reserved for healthcare workers and other medical first responders; and

**WHEREAS**, cloth face coverings are relatively inexpensive and readily available as the CDC states they can be made from household items and provides online guidance for making “do-it-yourself” coverings for people that cannot or do not want to buy one from the increasing sources producing and selling coverings; and

**WHEREAS**, the Board finds it is in the best interest of public health, safety and welfare of the residents and workers of and visitors to Pinellas County to require suitable face coverings in certain public locations to slow the spread of COVID-19; and

**WHEREAS**, the Board finds the inconvenience of an ordinance requiring the use of face coverings or other suitable face coverings is minimal compared to the risk to the health, safety, and welfare of the community were no such rule imposed; and

**WHEREAS**, the Board finds implementation of this ordinance is necessary for the preservation of the health, safety, and welfare of the community; and

**WHEREAS**, Section 1(f) of Article VIII of the Florida Constitution vests the Board with the authority to enact ordinances having countywide effect that are not inconsistent with state law, provided that such ordinance shall not be effective within a municipality that has adopted an ordinance in conflict with the County ordinance, to the extent of such conflict; and

**WHEREAS**, pursuant to Pinellas County Charter section 2.04(k), the County has countywide authority for the development and implementation of Emergency Management programs countywide, prevailing over municipal ordinances where those ordinances conflict; and

**WHEREAS**, the State of Florida has not preempted local governments from regulating in the field of minimum health requirements with respect to COVID-19; and

**WHEREAS**, the County remains under a State of Local Emergency and this Ordinance is intended to constitute an order enforceable as a misdemeanor by law enforcement through §§ 252.47 and 252.50, Florida Statutes; and

**WHEREAS**, the County has elected to adopt this emergency order by ordinance to allow it to be enforced as a non-criminal local ordinance violation in addition to all other remedies available for enforcement of the Ordinance under the law.

**NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PINELLAS COUNTY, FLORIDA:**

**SECTION 1. Findings.** The above recitals are adopted by the Board as legislative findings.

**SECTION 2. Definitions.** For purposes of this ordinance, the following terms are defined as follows:

- (1) **Face Covering.** A “face covering” is a material that securely covers the nose and mouth and remains affixed in place without the use of one’s hands and serves as personal protective equipment. It can be secured to the head with ties or straps or simply wrapped around the lower face covering the mouth and nostrils, as described by applicable guidance from the CDC. A cloth face covering may be factory-made or sewn by hand or can be improvised from clothing or other household items. Examples of compliant homemade masks may be found at <https://www.cdc.gov/coronavirus/2019ncov/prevent-gettingsick/diy-cloth-face-coverings.html>. Persons who wear face coverings should review the CDC and Florida Department of Health guidelines regarding safely applying, removing, and cleaning face coverings.
- (2) **Operator.** “Operator” means any individual or entity that owns a business or that controls the operation of a business location, even for a period of time, regardless of the formal title or role held by that individual or entity.

(3) Social Distancing. “Social distancing” means keeping space between yourself and other people by staying at least 6 feet (about 2 arm’s length) from other people, other than a companion.

(4) Companion. “Companion” means a person or persons by whom you are accompanied.

(5) Bar. A “Bar” is a place licensed to, and which does, serve alcoholic beverages. It does not include a Restaurant. It includes but is not limited to nightclubs, taverns, bottle clubs, fraternal order organizations, or other place that serves alcoholic beverages for on-site consumption. A Bar includes places outdoors, such as beach bars at hotels, etc., that otherwise meet this definition.

(6) Restaurant. A “Restaurant” is an on-site or takeout food service establishment that, at the time of adoption of this Ordinance, has for the preceding 30 days, received at least 51 percent of gross food and beverage revenue from the sale of food and nonalcoholic beverages.

(7) Indoor Retail Business. An “Indoor Retail Business” is any business that:

- a) Operates under a roof or is enclosed by two or more walls; and
- b) Sells goods or services directly to patrons or customers in-person, with both the seller and the buyer physically present.

NOTE: This definition specifically does not include Professional Office, Manufacturing, or other businesses not primarily retail in nature.

### **SECTION 3. Mandatory requirements and prohibitions.**

(1) An owner, manager, employee, of a Bar, Restaurant or Indoor Retail Business establishment must wear a face covering at all times while on-duty and directly or indirectly preparing food or beverage, or serving food or beverage, or having customer contact, regardless of where the food or beverage is being prepared or whether the customers being served food or beverage or the customer contact is inside an Indoor Public Place or outdoors, such as on a patio or sidewalk. Persons are generally discouraged from utilizing N95 rated masks, as those are critical supplies for health care workers, police, fire, emergency management, or other persons engaged in life/safety activities.

(2) The face covering requirements of this section do not apply to:

- a. Persons strictly adhering to and maintaining Social Distancing.
- b. Governmental entities, such as schools, courthouses, city halls, fire stations, State offices, etc. Governmental entities are encouraged to develop procedures to protect their own employees and members of the public transacting business within their entity.

- c. Hospitals and other health care facilities. These entities are encouraged to develop procedures to protect patients, their own employees and members of the public within their entity.
- d. Persons exercising while maintaining Social Distancing.
- e. Public safety, fire, EMS, law enforcement and other life safety and health care personnel, as their personal protective equipment requirements will be governed by their respective agencies or employers.
- f. 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 employees. ***This exception does not apply to employees who are present in the kitchen or other food and beverage preparation area of a restaurant or food establishment.***
- g. Patrons or customers in any Indoor Retail Business that have no contact with an employee of the business except as protected by a solid barrier such as a plexiglass shield that substantially prohibits incidental infection from respiratory droplets, provided that 6 feet of distance exists between all other customers or persons not at all times protected by the solid barrier.
- h. A situation where any person who is hearing-impaired needs to see the mouth of someone wearing a face covering to communicate with the person wearing the face covering, these requirements do not apply during the course of that communication.
- i. These requirements do not apply to a person who has trouble breathing or while a person is unconscious, incapacitated, or otherwise unable to remove the face covering without assistance.
- j. These requirements do not apply if following these requirements would be detrimental to health, safety, or security. If this exception is being asserted for health reasons, the person asserting this exception is not required to carry or produce documentation verifying the health condition or to specifically identify the health condition to the business, an operator, or law enforcement.
- k. These requirements may not be applied in a manner that would conflict with the Americans with Disabilities Act (ADA).

(3) The owner, operator, manager, and employee of a Bar, Restaurant or Indoor Retail Business shall ensure that every individual in that establishment complies with this Ordinance. Each owner or Operator should establish rules for that business establishment that encourage social distancing, hand washing, and other protective measures for customers and employees based upon guidelines provided by the Centers of Disease Control and the State Department of Health.

(4) Any business establishment, including all Bars and Restaurants, that serves food or drink for on-site consumption must comply with all of the following:

- a) Social Distancing must be maintained in accordance with this Ordinance and CDC guidance to the greatest extent feasible at all times.
- b) No food or drinks may be served to patrons for on-site consumption that are not seated at a table or bar. **Standing at a bar is prohibited.**
- c) Tables must be spaced such that no person and their Companions seated at a table is less than 6 feet from another seat or person and their Companions at a different table.
- d) Persons seated at a bar must be spaced such that no person with their Companions seated at the bar is less than 6 feet from another person or their Companions.
- e) Bars shall not maintain spaces that allow the congregation of unseated people. Bar patrons must not be permitted to remain unseated at a table or at the bar, in any area of the Bar, unless waiting to be seated. Any groups of patrons so waiting must remain Socially Distanced in groups not larger than 10, all of whom must be Companions. This specifically is intended to prohibit dance floor areas within any Bar or Restaurant or other areas allowing congregation of unseated persons.
- f) No group larger than 10 may be seated at any one table.

(5) It is unlawful and a violation of this Ordinance for any employer to prohibit any employee within Pinellas County from wearing a face covering as personal protective equipment as described in the CDC guidance relating to face coverings. This is not intended to prohibit employers from establishing uniform, non-discriminatory, standards that allow only specific face coverings provided by the employer provided that they are at least as protective as the employee supplied face covering as described by the CDC guidance.

(6) This Ordinance is not intended to decrease or lessen any social distancing or public protection requirements otherwise made applicable by law or order of the County, the State or any other local governmental entity.

**SECTION 4. Penalties and Enforcement.** This ordinance may be enforced through any of the following legal processes:

- (1) Non-Criminal Citation.
  - a. A code compliance or law enforcement officer may, upon observation of a violation by a person who does not immediately put on a face covering after receiving a warning, issue a Local Ordinance Violation citation to appear in County Court.
  - b. A code enforcement or law enforcement officer may, upon observation of a violation of any other provision of this ordinance, including Paragraph 4 of Section 3 of this Ordinance, by an owner or employee of a Restaurant or Bar, or a customer of such establishment, issue a Local Ordinance Violation citation to appear in County Court.

c. Any person or business establishment prosecuted under this subsection and found in violation of this ordinance may be punished by a fine of \$100 for a first violation, \$250 for a second violation and \$500 for a third violation.

(2) Injunctive relief. This Ordinance may be enforced through a complaint for injunctive relief in Circuit Court seeking to enjoin violations that occur within the County.

(3) Misdemeanor Arrest or Notice to Appear for Repeat Violations. Repeat violations of this Ordinance, which was enacted for emergency purposes during a State of Local Emergency declared by the County, may be enforced by police officers or Sheriff's Deputies pursuant to the provisions of §§252.47 and 252.50, Florida Statutes.

(4) Defenses. An owner, Operator, manager, and/or employee of a business establishment shall not be liable in any enforcement action taken under this section for the violations of a guest, customer, and/or patron if that owner, Operator, manager, or employee directed that guest, customer, and/or patron who refuses to comply with the provisions of this Ordinance to vacate the premises or face prosecution of trespass.

**SECTION 5. Severability.** If any section, subsection, sentence, clause, or provision of this ordinance is held by a court of competent jurisdiction to be invalid, the remainder of this ordinance shall not be affected by such invalidity.

**SECTION 6. Applicability and Conflict.** This ordinance is intended to have countywide application. All County ordinances or parts of ordinances in conflict with this ordinance are hereby suspended to the extent of said conflict for the duration of this Ordinance.

**SECTION 7. Effective Date.** This Ordinance shall take immediate effect upon adoption and shall be filed with the Department of State.

**SECTION 8. Sunset Date.** Unless rescinded or extended by subsequent act of the Board, this ordinance shall sunset upon the expiration of the County State of Local Emergency as it may be extended pursuant to law.

**SECTION 9. Codification.** Due to the temporary nature of this ordinance, the Board directs the Clerk to send the ordinance to the Municipal Code for publication on its website but with instructions to not codify the ordinance within the Pinellas County Code.

**PASSED AND ADOPTED** by the Board of County Commissioners of Pinellas County, Florida, as an emergency ordinance at a regular meeting of said Board held on the 23<sup>rd</sup> day of June 2020.