

EMERGENCY ORDER NO. 20-049
AN ORDER OF THE ST. LUCIE COUNTY ADMINISTRATOR
PROVIDING FOR FACE COVERINGS IN PUBLIC

RECITALS:

1. COVID-19, a respiratory illness caused by a virus that spreads rapidly from person to person and may result in serious illness or death, constitutes a clear and present threat to the lives, health, welfare, and safety of the people of St. Lucie County; and

2. On March 1, 2020, Governor DeSantis declared a Public Health Emergency because of COVID-19; and, on March 9, 2020, Governor DeSantis issued Executive Order 20-52, declaring a State of Emergency because of COVID-19; and

3. On March 11, 2020, the World Health Organization declared the spread of COVID-19 to be a global pandemic; and on March 13, 2020, President Trump declared a national emergency concerning COVID-19; and

4. The St. Lucie County Public Safety Director declared a local state of emergency in St. Lucie County based on the COVID-19 virus on March 17, 2020; and

5. The Centers for Disease Control and Prevention (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

6. 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

7. 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 others¹; and

8. The CDC does not recommend wearing cloth face covering for children under the age of 2, or anyone who has trouble breathing, or is unconscious, incapacitated or otherwise unable to remove the mask without assistance; and

9. 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

10. 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

11. The CDC, the Florida Department of Health and the University of Florida recommend the use of face coverings, including those which are homemade, to slow the spread of the disease; and

12. The gradual reopening of the State and the County will lead to more contact between individuals and, thus the greater potential for the increased community spread of the disease. Face masks are of great assistance in preventing individuals who may be shedding the virus, when the virus replicates in infected persons, from spreading it to other individuals; and

13. Researchers at the University of Florida believe it is too early to ease restrictions without enhanced testing in place and that such testing is not currently

¹ <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/diy-cloth-face-coverings.html>

in place and that COVID-19 will be present in the population for a long time²; and

14. According to the Florida Department of Health, local testing has been underutilized and the number of individuals tested needs to increase and contact tracing must increase as well; and

15. Governor DeSantis, on April 29, 2020, issued Executive Order 20-112 designed to ease some restrictions established by Executive Order 20-90 in the first phase of a plan to fully reopen the State; and

16. Executive Order 20-112 does not preempt the authority of local governments to add restrictions to businesses opened by the Governor; and

17. In a recent United States Supreme Court Case, the Court denied injunctive relief where California limited attendance at places of worship due to COVID-19. Chief Justice Roberts described COVID-19 as “a novel severe acute respiratory illness that has killed...more than 100,000 nationwide” and noted that “(a)t this time there is no known cure, no effective treatment, and no vaccine” and “because people may be infected, be asymptomatic, they may unwittingly infect others.” Chief Justice Roberts also stated “(t)he precise question of when restrictions on particular social activities should be lifted during the pandemic is a dynamic and fact-intensive matter subject to reasonable disagreement. Our Constitution principally entrusts the safety and the health of the people’ to the politically accountable officials of the States ‘to guard and protect.’ ... When those officials ‘undertake to act in areas fraught with medical and scientific uncertainties,’ their latitude ‘must be especially broad.’ Where those broad limits are not exceeded, they should not be subject to second-guessing by an ‘unelected federal judiciary,’ which lacks the background, competence, and expertise to assess public health and is not accountable to the people.” S. Bay United Pentecostal Church v. Newsom, 590 U. S. ____ (2020)(2020 WL 2813056, at I); and

18. Alachua County issued Emergency Order 2020-21 requiring face masks in certain circumstances. The County’s Emergency Order was challenged in State Circuit Court and in

² <https://mediasite.video.ufl.edu/Mediasite/Play/b8849c7ddb114f2db5fcc0be6a4ec0b41d>

Federal District Court. Both Courts issued Orders denying Plaintiffs' Emergency Motions for Temporary Injunction. In denying the request for temporary injunction, State Circuit Judge Donna M. Keim stated, "The protection of the safety and welfare of the public is inherent in the role of local government ... The requirement to wear a facial covering during the limited circumstance set forth in the ordinance is a minimal inconvenience; and, its benefits to the public in potentially reducing the spread of COVID-19 outweigh any inconvenience. Here, there is a global pandemic involving COVID-19, a virus which the CDC and others advise is spread through airborne transmission and is spread by asymptomatic individuals. Multiple sources relied upon by the County reflect that mitigation is depending upon the use of social distancing and personal protection equipment, such as face masks/coverings. The County's need to take measures to control the spread of COVID-19 clearly outweighs the Plaintiff's private interest in not wearing a mask in the limited circumstances required by the county's emergency order; and an injunction in this situation would disserve the public interest." Green v. Alachua County, Case No.: 01-2020-CA-001249 (Order dated May 26, 2020). See also: Ham v. Alachua County Board of County Commissioners et. al. Case No. 1:20cv111-MW/GRJ (Order dated June 3, 2020 by Chief United States District Judge Mark E. Walker) ("Plaintiffs have not demonstrated that Alachua County exceeded its broad limits and this Court, like the Supreme Court, will not engage in second-guessing"); and

19. On June 5, 2020, Governor DeSantis issued Executive Order 20-139, moving all counties in Florida, other than Miami-Dade, Broward and Palm Beach Counties, into Phase 2 of the plan issued by the Task Force to Re-Open Florida, which Order supersedes Executive Order 20-91, the Safer at Home Order, and supersedes in part, and extends and modifies other provisions of, Executive Order 20-112; and

20. On June 20, 2020, the State Surgeon General issued a Public Health Advisory providing that all individuals in Florida should wear face coverings in any setting where social distancing is not possible; and

21. Based on recent information and data from the St. Lucie County Department of Health, the number of confirmed cases of COVID-19 in St. Lucie County has increased significantly since additional re-openings were authorized under Phase 2 of the Governor's Plan for Florida's Recovery; and

22. As of July 10, 2020, St. Lucie County has 2,680 positive COVID-19 cases and 61 fatalities with record-breaking positive COVID-19 tests coming in daily and an overall positive test percentage rate of 14.8%, one of the highest in the State of Florida; and

23. Based on advice from medical professionals, the number of confirmed cases of COVID-19 in St. Lucie County will increase exponentially if additional measures to stop or to slow the spread of COVID-19 are not instituted; and

24. The County's hospitals and doctors in our community have expressed concern that over the past month, hospital admittance for COVID-19 has had a significant increase. As one example, on July 10, 2020, Lawnwood Regional Medical Center & Heart Institute indicated that over the past 30 days, it has experienced a 9-fold increase in COVID-19 patients and that COVID-19 patients in ICU beds have increased by more than 60%; and

25. The CDC and Florida Department of Health continue to remind residents that by wearing a face covering, the resident protects others from exposure as well as themselves; and

26. The Florida Department of Health, the CDC and the Cleveland Clinic have recommended that all persons wear cloth face coverings while in public to help control the spread of COVID-19; and

27. St. Lucie County is compelled to take additional steps to minimize the spread of COVID-19 in response to the recent spike in positive COVID-19 cases and hospital admittances to protect the health, safety and welfare of St. Lucie County residents and visitors; and

28. Wearing face coverings will help reduce the spread of COVID-19 in St. Lucie County; and

29. Any mask mandate would be for sanitary purposes to promote the health, safety, and welfare of all persons in St. Lucie County and not for the purpose

of mandating a medical recommendation or other medical treatment; and

30. On June 26, 2020, the St. Lucie County Administrator issued Emergency Order No. 20-044, requiring the wearing of face coverings in County buildings; it is the intent of this Order to supplement, but not supersede Emergency Order No. 20-044; and

31. On July 1, 2020, the Board of County Commissioners adopted Emergency Ordinance No. 20-020, in which the Board set forth determinations consistent with those set forth in this Order; it is the intent of this Order to supplement, but not supersede Emergency Ordinance No. 20-020; and

32. In determining whether to issue this Order, I have considered information received from the Florida Department of Health, the University of Florida, the State Surgeon General, the CDC and other health care providers and medical professionals regarding challenges raised at this point in time by COVID-19.

33. Implementation of this Order is necessary for the preservation of the health, safety and welfare of the community; and

34. The spread of COVID-19 poses a danger to life and the economic well-being of St. Lucie County residents; and

35. Requiring individuals to wear face coverings in public will significantly help reduce the spread of COVID-19 and lessen the increase in positive COVID-19 cases in St. Lucie County.

NOW THEREFORE, BE IT ORDERED AS FOLLOWS:

SECTION 1. INCORPORATION OF RECITALS. The recitals identified above are incorporated herein.

SECTION 2. MANDATING PERSONS WEAR FACE COVERINGS IN PUBLIC

PLACES.

a. Face Coverings.

1. **Indoor Public Places, Businesses and Establishments.** Face coverings must be worn by all natural persons while obtaining or providing any goods or services or otherwise visiting or working in any indoor public place, business or establishment.

2. **Outdoor Public Places, Businesses and Establishments.** Face coverings must be worn by all natural persons while obtaining or providing any goods or services or otherwise visiting or working in outdoor public places, businesses and establishments if social distancing in accordance with CDC guidelines of at least six feet (6') between persons not of the same household cannot be consistently maintained.

3. **Restaurants and Food Service Establishments.** Face coverings must be worn by all natural persons in restaurants and food service establishments whether indoors or outdoors except when actively consuming food or beverages.

SECTION 3. DEFINITIONS.

a. **Businesses and Establishments.** Businesses and establishments are any locations in which business is conducted, goods are made, stored, sold or processed or services are rendered. Businesses and establishments include, but are not limited to, restaurants, bars, retail stores, salons, massage parlors, tattoo parlors, hotels, grocery stores, gyms, fitness centers, pharmacies, indoor recreational facilities, hospitals, medical offices, dental offices, movie theaters, concert halls, auditoriums, bowling alleys, playhouses, arcades, public transit and vehicles for hire. For purposes of this Order, indoor businesses and establishments include any area or location that is outdoors and has a roof overhead or other overhead covering where any business is conducted, goods are made, stored, sold or processed or services are provided.

b. **Face covering.** A face covering includes any covering which snugly covers the nose and mouth and is secured in place. Persons who wear masks should review the CDC and Florida Department of Health guidelines regarding properly and safely applying, removing and cleaning masks. Medical and surgical masks, such as N95

masks or other similar medical surgical masks, should be reserved for health care personnel, police, firefighters, emergency management and other first responders engaged in life/safety activities.

c. **Indoor public place**. An indoor public place is any location in which the public has or may obtain legally permissible access whether publicly or privately owned that is under a roof or other overhead covering.

d. **Outdoor public place**. An outdoor public place is any location in which the public has or may obtain legally permissible access whether publicly or privately owned that is not under a roof or other overhead covering and includes.

SECTION 4. EXEMPTIONS.

Face coverings are not required for the following:

a. Children under six (6) years of age and any child while under the custody of a licensed childcare facility, including schools, summer camps and daycare centers.

b. Individuals prohibited from wearing face coverings by Federal or State safety or health regulations.

c. Public health, safety, fire, or other life safety personnel that have personal protective equipment requirements governed by their respective agencies.

d. Persons receiving goods and services from a business or establishment for the shortest practical period of time during which the receipt of such goods or services necessarily precludes the wearing of a face covering such as, but not limited to, consuming food or beverage or receiving dental services, facial grooming or treatments.

e. Persons who have a medical condition or disability that makes the wearing of face coverings unsafe.

f. Persons may temporarily remove face coverings while assisting persons who are hearing impaired or who rely on reading lips in order to communicate.

g. Persons in private rooms of a lodging establishment, such as hotel, motel or vacation rental; however, face coverings must be worn in common areas as proscribed by this Order.

h. Persons engaged in outdoor work or recreation with appropriate social distancing pursuant to CDC guidelines in place and being practiced.

i. Persons working in a business or establishment who maintain social distancing from another person, except for persons in restaurants and food service establishments covered under Section 1.a.(3).

j. Persons for whom wearing a facial covering is subject to a religious objection.

SECTION 5. ENFORCEMENT.

It is the intent of this Order to seek voluntary compliance with the provisions contained herein and to educate and warn of the benefits of compliance and the dangers of noncompliance.

- a. Prior to the issuance of a citation, the individual will be asked to comply with the Emergency Order or be able to explain how an exemption in Section 4 applies to them. Failure to comply with the requirements of this Emergency Order presents a serious threat to the public health, safety and welfare, and a citation may be issued for such a violation after the above inquiry and the issuance of a written warning. For the issuance of a citation, the failure to comply with the requirements of this Emergency Order must be within forty-five (45) days of the issuance of a written warning.
- b. The penalty for a violation of this Order is:
 - i. First offense: A fine of \$25.00.
 - ii. Second offense: A fine of \$62.50.
 - iii. Third offense and each subsequent offense: A fine of \$125.00.
- c. All other remedies available at law or equity, including injunctive or other equitable relief, remain available to the County, even after issuance of a citation.
- d. Any person violating this Order shall be given a written warning prior to any enforcement under Section 252.50, *Florida Statutes*. However, in the event voluntary compliance is not achieved, this Emergency Order can be enforced by County law enforcement agencies in accordance with Section 252.50, *Florida Statutes*. Any person who violates this Emergency Order

can be charged with a misdemeanor of the second degree which shall only be enforced by a fine and court costs pursuant to Section 775.083, *Florida Statutes*.

SECTION 6. APPLICABILITY.

This Order applies to the incorporated and unincorporated areas of St. Lucie County. This Order does not apply to the internal operations of the local governments within St. Lucie County, the St. Lucie County School District, the State University System, the State College System, the State of Florida, Federal agencies or public utilities not associated with St. Lucie County which are encouraged to adopt their own rules and procedures for face coverings.

SECTION 7. CONFLICTING PROVISIONS.

Any provisions within this Order that conflict with any State or Federal law or constitutional provision, or conflict with or are superseded by a current or subsequently-issued Executive Order of the Governor of the State of Florida or the President of the United States, shall be deemed inapplicable and deemed to be severed from this Order, with the remainder of the Order remaining intact and in full force and effect. To the extent that the application of some or all of the provisions of this Order is prohibited on the sovereign land of a federally or state recognized sovereign or Indian tribe, such application is expressly excluded from this Order.

SECTION 8. EFFECTIVENESS.

This Order shall be effective on July 15, 2020, at 8:00 a.m., and will expire on August 15, 2020, or sooner, upon the expiration of the existing State of Local Emergency, as same may be extended by subsequent order or declaration, whichever occurs earlier, unless earlier terminated by subsequent order or by the Board of County Commissioners.

SECTION 9. GOVERNOR'S EXECUTIVE ORDERS.

This Order is in addition to the Executive Orders issued by Governor DeSantis.

SECTION 10. PRIOR ORDERS.

Prior emergency orders remain in full force and effect unless modified or superseded.

SECTION 11. FILING.

This Order shall be filed in the Office of the Clerk of the Circuit Court.

Signed this _____ day of _____, 2020 at _____ (a.m.) (p.m.)

Howard N. Tipton
County Administrator