

ORDINANCE NO. 20-83

AN ORDINANCE TO AMEND ORDINANCE NO. 20-69, AS AMENDED BY ORDINANCE NO. 20-72 AND ORDINANCE NO. 20-76, REQUIRING THAT FACE COVERINGS OR MASKS BE WORN IN PUBLIC IN THE CITY OF BIRMINGHAM DURING THE COVID-19 PUBLIC HEALTH EMERGENCY AND RECOVERY

WHEREAS, the Council of the City of Birmingham recognizes the emergency declarations of the President of the United States, the Governor of the State of Alabama, and the Mayor of the City of Birmingham related to the spread of COVID-19 disease in our community; and,

WHEREAS, the Council has authority under Ala. Code, Sec. 11-47-131, by ordinance, to prevent the introduction of contagious, infectious, or pestilential diseases into the City and to establish and regulate a sufficient quarantine, not inconsistent with laws of the state, in the City and to punish any breach of quarantine law; and,

WHEREAS, the Council finds that an emergency of unprecedented size resulting from the natural cause of community spread of a novel human coronavirus disease, COVID-19, has occurred in the City of Birmingham; and,

WHEREAS, COVID-19 is a disease caused by a novel coronavirus, previously unknown in humans, and causes upper-respiratory tract illnesses that can range from mild to severe, spread quickly, and may cause death, particularly in older adults and persons with certain chronic medical conditions; and,

WHEREAS, the World Health Organization declared COVID-19 to be a global pandemic as of March 15, 2020; and,

WHEREAS, the spread and effect of COVID-19 has created a humanitarian crisis of unanticipated proportions; and,

WHEREAS, states of emergency have been declared by the President of the United States, the Governor of Alabama and the Mayor of the City of Birmingham, and continue to exist; and,

WHEREAS, the City of Birmingham is threatened by COVID-19 because of the extraordinary ability of the virus to spread rapidly among humans, and COVID-19 thereby constitutes a clear and present threat to the health, safety, and welfare of the citizens and visitors of the City; and

WHEREAS, although under investigation and development, no vaccine or drug is currently available to cure or combat COVID-19; and

WHEREAS, as of May 17, 2020, Alabama has 11,699 identified cases of coronavirus, including 1,309 cases in Jefferson County, where the City of Birmingham is primarily located; and,

WHEREAS, as of May 17, 2020, Alabama has recorded 485 deaths attributed to COVID-19, with 73 of those deaths occurring in Jefferson County; and,

WHEREAS, current discussions about COVID-19 include plans to safely return the public to jobs and regular activities; and,

WHEREAS, the City Council recognizes that it is critical to continue maintaining 6-foot social distancing to slow the spread of COVID-19, but that the additional use of simple cloth face coverings, as recommended by CDC, can further aid in slowing the spread of the virus by reducing the chances of asymptomatic people transmitting the virus to others; and,

WHEREAS, in attempting to reopen certain businesses and other activities in the City of Birmingham, it is in the best interest of public health for individuals to continue to use social distancing and the additional precaution of face coverings or masks while in public contact with other persons; and,

WHEREAS, it continues to be extremely important to protect vulnerable individuals from contracting the virus and such persons should continue to maintain strict social distancing, including sheltering at home, during early phases of reopening; and,

WHEREAS, members of households with vulnerable individuals need to use all reasonable precautions to avoid potential exposure to the virus; and,

WHEREAS, on May 5, 2020, the Council adopted Ordinance No. 2 Ordinance No. 20-69, requiring that face coverings or masks be worn in public in the City of Birmingham, beginning May 1, 2020; and,

WHEREAS, on May 8, 2020, the State Health Officer amended his “Safer at Home” order, effective until 5:00 p.m. on May 22, 2020; and,

WHEREAS, on May 8, 2020, the Governor issued her “Ninth Supplemental State of Emergency: COVID-19” proclamation, extending the state of emergency issued on March 13, 2020, which expires on or about May 12, 2020, for an additional sixty (60) days; and,

WHEREAS, Ordinance No. 20-76 requires that it be reviewed for possible modification or extension prior to its expiration at 11:59 p.m. on May 22, 2020; and,

WHEREAS, the Council finds that it is in the best interest of the public peace, health, welfare, and safety, and to preserve the lives of citizens of the City of Birmingham, to require that masks, consisting of at least simple cloth face coverings, be worn by persons when interacting in public spaces in the City of Birmingham.

SECTION 1.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Birmingham that facial coverings or “masks” shall be required in public places within the City to slow the spread of the novel coronavirus disease, known as COVID-19, and Ordinance No. 20-76 is hereby is amended, as follows:

(a) DEFINITIONS:

Face covering or mask: A device to cover the nose and mouth of a person to impede the spread of saliva or other fluids during speaking, coughing, sneezing or other intentional or involuntary action. Medical grade masks are not required; coverings may be fashioned from scarves, bandanas or other suitable fabrics. The mask must cover the mouth and nose of the wearer.

Public place: Any place other than an individual’s home or personal vehicle; provided, however, that face coverings or masks should be worn when interacting with someone other than a member of the household at home or when traveling with someone who is not a member of the household.

Vulnerable individuals: Elderly individuals or 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.

(b) Face coverings or masks shall be worn at all times by persons over the age of two (2) years and who can medically tolerate doing so when in public places within the City of Birmingham. Persons working alone in separate office spaces or in non-public workplaces where there is more than adequate social distancing area, based on the size of and number of people in the space (indoors or out of doors) need not wear a face covering or mask at all times. However, such persons must be prepared to don and wear a face covering or mask when interacting with others in groups of 10 or more persons or in groups of any size where social distancing of more than six (6) feet cannot be consistently maintained.

(c) The requirement to wear face coverings or masks shall apply to all persons, whether employees or customers or clients of businesses within the City.

(d) Exceptions:

(1) Face coverings or masks are not required to be worn over the face during individual outdoor exercise, for example, walking or jogging, but must be worn when encountering and interacting with groups of other people in a park or other public place. For the purposes of this subsection, “exercise” includes other forms of physical exertion, whether for recreation or work, where unrestricted breathing is needed to perform the activity.

(2) a. Children two (2) years of age and under, as face coverings or masks may pose a risk of choking, strangulation or suffocation to infants and young toddlers. Carriers and strollers with coverings that allow the child to breathe comfortably are alternatives for infants and young toddlers.

b. Parents, guardians, and caregivers shall be responsible for ensuring proper masking of children over the age of two (2) years when in public but must ensure that the face covering or mask does not pose a choking hazard for children older than two (2) and can be safely worn without obstructing a child's ability to breathe.

c. Parents, guardians and caregivers of children eight (8) years old or younger shall exercise judgment regarding the ability of those children to consistently wear a face covering or mask.

d. Parents, guardians and caregivers shall exercise judgment and avoid bringing children not wearing face coverings or masks into public places, especially where contact with vulnerable individuals is expected, due to concerns of health officials that children may be asymptomatic spreaders of COVID-19.

e. Daycares and other childcare establishments shall provide parents with information on the facility's procedures for use of face coverings or masks. Where the consistent use of face coverings or masks are not possible due to supervision of multiple children, the facility shall adhere to sanitary, hygienic and face covering practices to the maximum extent practicable.

(3) Patients in examination rooms of medical or dental offices or clinics or hospitals where there is a necessity to examine or treat the mouth or nasal area, subject to the direction of the medical or dental professionals in charge of the office, clinic or hospital.

(4) When wearing a face covering or mask poses a greater mental or physical health, safety or security risk such as anyone who has trouble breathing, or is unconscious, incapacitated or otherwise unable to remove the cover without assistance. For purposes of this subsection, "safety risk" shall include external factors, such as, but not limited to, where wearing a face covering or mask may pose a risk to persons working on ladders or at height, wearing other respiratory protection, heavy physical exertion or operating heavy equipment or operating in an environment where a face covering or mask hinders communications. However, employers are encouraged to structure work to promote social distancing and limit close contact as much as possible within in workplaces where face coverings or masks may pose such risks.

(5) When eating or drinking in public at a restaurant, bar or other food or beverage establishment operating under conditions required by the state health officer's order.

(e) Business owners, managers and supervisors shall ensure that employees, customers, clients and/or visitors observe the requirement for face coverings or masks while at the place of business, as provided in subsection (b), above. Businesses are strongly encouraged to follow the guidance provided in flyers from the Alabama Department of Public Health at <https://www.alabamapublichealth.gov/covid19/index.html>, related to the state health officer's orders. Specific guidance is provided for restaurants, athletic facilities, close contact personal service businesses, and places of worship, as well as for businesses, generally. This shall not be interpreted as requiring businesses to provide face coverings or masks to employees or authorizing any business

that remains closed pursuant to an order of the state or county health officer to operate until authorized by the appropriate health authority.

(f) Reusable face coverings or masks must be kept clean and sanitary, including regular washing at least daily.

(g) This ordinance shall remain in effect until 11:59 p.m. on May 29, 2020. Prior to that time, this ordinance shall be evaluated to determine if, in accordance with federal, state and local authorities, including the appropriate health authority(ies), the COVID-19 emergency conditions require continuation or modification of this ordinance, including further relaxing of its restrictions, or if it shall expire without further amendment. If the state of emergency is terminated by the Governor before that time, the Mayor is authorized to declare that the mandatory wearing of face coverings or masks pursuant to this ordinance is no longer required and the Council shall repeal this ordinance at its next regular meeting. This ordinance may be reviewed periodically by or as needed by the Council during the continuing state of emergency. If there is insufficient information to make such a determination at the regular meeting of the City Council preceding the expiration of the state of emergency, if not terminated earlier, or if the Governor further extends the state of emergency, this ordinance shall continue in full force and effect until the Council meets to review this ordinance with respect to any changed conditions.

SECTION 2. To the extent that this ordinance is in conflict with other ordinances of the City, this ordinance shall supersede the others until this ordinance is amended or repealed.

SECTION 3. Failure to comply with this ordinance is punishable by a fine of up to \$500.00 and/or up to thirty (30) days in the municipal jail.

SECTION 4. If any subsection, sentence, clause, phrase, or word of this ordinance or any application of it to any person, structure, or circumstance is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, then such decision shall not affect the validity of the remaining portions or applications of this ordinance.

SECTION 5. This Ordinance shall become effective upon passage, approval and publication or as otherwise provided by law.

Adopted by the Council of the City of Birmingham on May 19, 2020.

A True Copy

Lee Frazier, City Clerk

Birmingham News May 22, 2020