

RECOMMENDED BY: RANDALL L. WOODFIN, MAYOR  
WILLIAM PARKER, COUNCIL PRESIDENT

SUBMITTED BY: RANDALL L. WOODFIN, MAYOR  
WILLIAM PARKER, COUNCIL PRESIDENT

**ORDINANCE NO. 21-31**

**AN ORDINANCE TO REQUIRE WEARING FACE COVERINGS OR MASKS IN PUBLIC IN THE CITY OF BIRMINGHAM DURING THE COVID-19 PUBLIC HEALTH EMERGENCY AND RECOVERY**

**WHEREAS**, the Council of the City of Birmingham (the “Council”) 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 community spread of a novel human coronavirus disease, COVID-19; and,

**WHEREAS**, more than a year ago, the Chief Health Officer of Jefferson County and the State Health Officer issued orders for the closing of certain businesses and the limitations on the operation of essential businesses within their respective jurisdictions; and,

**WHEREAS**, many restrictions on businesses have been lifted or reduced; and,

**WHEREAS**, general statewide requirements for wearing masks or face coverings in public have been in place since July 15, 2020 and will expire April 9, 2021; and,

**WHEREAS**, the Council has authority under Ala. Code, Sec.11-47-130, to maintain the health and cleanliness of the City of Birmingham (the “City”) and, under Sec. 11-47-131 and Sec. 11-47-132, to prevent the introduction and spread of contagious, infectious, or pestilential diseases into and within the City by adoption of ordinances and regulations necessary to carry out those statutory purposes; and,

**WHEREAS**, the Council finds that an emergency of unprecedented size resulting from COVID-19, is ongoing in the City; and,

**WHEREAS**, the City and its metro area remain in a high risk category for which the White House Task COVID-19 Task Force and the CDC recommend continuing precautions, such as social distancing and wearing masks, due to the number of new cases and positive test rate ([https://www.covidactnow.org/us/metro/birmingham-hoover\\_al/?s=1721643#recommendations](https://www.covidactnow.org/us/metro/birmingham-hoover_al/?s=1721643#recommendations)); and,

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

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

**WHEREAS**, the Centers for Disease Control ("CDC") has found that a significant portion of individuals with the novel coronavirus lack symptoms and those that eventually develop symptoms can transmit the virus to others before any symptoms appear, meaning that the virus can be spread between people interacting in close proximity to each other by actions such as speaking, coughing, or sneezing, even without exhibiting symptoms; and,

**WHEREAS**, in light of this evidence, CDC recommends wearing cloth face coverings in public settings where other social distancing measures are difficult to maintain, for example, grocery stores, pharmacies and other businesses people must visit to acquire goods and services necessary to maintain their comfort and well-being; and,

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

**WHEREAS**, as of March 30, 2021, Alabama has reported more than 514,000 cases of COVID-19 cases, including almost 75,000 in Jefferson County, where the City of Birmingham is primarily located; and,

**WHEREAS**, Alabama has recorded more than 10,000 deaths attributed to COVID-19, with almost 1500 of those deaths occurring in Jefferson County (<https://alpublichealth.maps.arcgis.com/apps/MapSeries/index.html?appid=d84846411471404c83313bfe7ab2a367>, last accessed 3/30/2021); and,

**WHEREAS**, although vaccines have been approved for emergency use, programs for vaccination are underway across the country, and medical professionals are learning more about treating COVID-19, only about 15% of the population of Jefferson County has been fully vaccinated as of March 30, 2021 and there is still no certainty as to when there will be sufficient immunity ("herd immunity") to reliably slow the spread of the pandemic; and,

**WHEREAS**, according to the CDC, while COVID-19 vaccines are effective, there are remaining questions about how the vaccines will affect the spread of the disease and the effect on emerging variants of the virus and, therefore, the CDC recommends that people continue precautions, such as wearing a mask, maintaining social distancing requirements, and avoiding crowds and poorly ventilated spaces until more is known about the effectiveness and impact of the vaccines on the spread of COVID-19 (<https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated.html>, last accessed 3/30/2021); and,

**WHEREAS**, the Council desires to safely return the public to jobs and regular activities; and,

**WHEREAS**, the City Council recognizes that it is critical to continue following CDC guidance to use masks or facial coverings to aid in slowing the spread of the virus while there is still a significant portion of the population that is unvaccinated; and,

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

**WHEREAS**, the Council finds that it is in the best interest of the public health, welfare, and safety to preserve the lives of citizens of the City, 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 while efforts to vaccinate a significant portion of the population continue.

## **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, 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 two or more layers of suitable breathable fabrics. The mask must cover the mouth and nose of the wearer and fit snugly, but comfortably, against the face. Guidance on proper mask materials, construction, use and care is available at <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/about-face-coverings.html>.

*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 heart disease, high blood pressure, chronic lung disease, diabetes, obesity, asthma, and those whose immune system is compromised or weakened, such as due to genetic defects or as a result of chemotherapy or other conditions.

(b) Face coverings or masks shall be worn at all times by persons over the age of six (6) 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 are not required to wear masks, 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 six (6) years when in public but must ensure that the face covering or mask does not pose a choking hazard for the children older without obstructing a child’s ability to breathe.

c. 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.

d. 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.

(6) The facial-covering requirement does not apply to:

(i) Any person who is voting, though wearing a face covering is strongly encouraged; or

(ii) Any person who cannot wear a facial covering because he or she is actively providing or obtaining access to religious worship, though wearing a face covering is strongly encouraged.

(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 current guidance from the Alabama Department of Public Health and the CDC related to safe operations, including any specific guidance or regulations for certain businesses with interpersonal interactions, including, but not limited to, restaurants, athletic facilities, close contact personal service businesses, and places of worship, as well as for businesses, generally. Effective February 2, 2021, a CDC order requires that face masks or proper coverings be worn on all public conveyances and at all public transportation hubs. (See <https://www.cdc.gov/quarantine/masks/mask-travel-guidance.html>.) 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 24, 2021. On or before May 18, 2021, 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 or if it shall expire without further amendment. This ordinance may be reviewed prior to May 18 as needed by the Council to determine if changed conditions warrant amendment or repeal.

**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 on a finding of guilty or a plea of guilty by:

- a. a fine of \$25.00 for a first offense;
- b. a fine of \$100.00 for a second offense;
- c. a fine of \$250.00 for a third offense;
- d. subsequent offenses shall be punished according to the general penalty set out in Section 1-1-6 of the General Code of the City of Birmingham.

**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 City Council April 6, 2021, and Approved by the Mayor April 6, 2021



A CERTIFIED COPY  
Lee Frazier, City Clerk  
Birmingham, Al

A handwritten signature in black ink, appearing to read "Lee Frazier".