

STATE OF SOUTH CAROLINA) EMERGENCY ORDINANCE
)
COUNTY OF AIKEN)
CITY OF NEW ELLENTON)
07/20/2020

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**AN EMERGENCY ORDINANCE REQUIRING INDIVIDUALS TO WEAR FACE COVERINGS
IN PUBLIC PLACES TO INCLUDE ALL CITY BUILDINGS, RETAIL AND FOODSERVICE
ESTABLISHMENTS, AND MATTERS RELATED THERETO**
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WHEREAS, the Governor of the State has subsequently declared a continued State of Emergency in Executive Orders 2020-15 (March 28), 2020-23 (April 12), 2020-29 (April 27), 2020-35 (May 12), 2020-38 (May 27), and 2020-40 (June 11);

WHEREAS, the State is experiencing a dramatic increase in the number of identified new COVID-19 cases, and as of June 25, 2020, the South Carolina Department of Health and Environmental Control (“DHEC”) is reporting that there have been 27,842 confirmed COVID-19 cases and 683 confirmed COVID-19 deaths in the State;

WHEREAS, S.C. Code § 5-7-250(d) provides that “[t]o meet public emergencies affecting life, health, safety or the property of the people, council may adopt emergency ordinances ... by the affirmative vote of at least two-thirds of the members of council present. An emergency ordinance is effective immediately upon its enactment without regard to any reading, public hearing, publication requirements, or public notice requirements. Emergency ordinances shall expire automatically as of the sixty-first day following the date of enactment;”

WHEREAS, the Council of the City of New Ellenton has determined, based on the recommendations of public health experts and responsive to a serious threat to the public health, safety, and welfare of its citizens, that it would serve the public interest and be within the City of New Ellenton’s police powers under Home Rule and S.C. Code § 5-7-60 to require that individuals wear face coverings in certain situations and locations;

WHEREAS, the South Carolina Attorney General, on June 25, 2020, issued a public statement that enacting local mask requirements is within the police power of municipalities and is not preempted by State law;

NOW, THEREFORE, be it ordained by the Council of the City of New Ellenton as follows:

Section 1. Definitions. As used herein, the terms below shall have the following meanings

- 1) “Establishment” means all City Government Building/Facilities or Foodservice Establishment or Retail Establishment.
- 2) “Face Covering” means a uniform piece of cloth, fabric, or other material that securely covers a person’s nose and mouth and remains affixed in place without the use of one’s hands. Face Coverings include, but are not limited to, bandanas, medical masks, cloth masks, scarves, and gaiters, provided that they are worn such that they securely cover the person’s nose and mouth.

- 3) "Foodservice Establishment" means any establishment within the City of New Ellenton that sells prepared food on a dine-in, delivery, carry-out, or drive-through basis.
- 4) "Responsible Person," with respect to an Establishment, means any individual associated with the Establishment who has the authority and ability to enforce the requirements of the Ordinance within the Establishment, such as an owner, manager, or supervisor. "Responsible Person" may also include an employee or other designee that is present at the Establishment but does not have the title of manager or supervisor, but who has the temporary or designated authority and ability to ensure that the requirements of this Ordinance are met while the Establishment is open to the public.
- 5) "Retail Establishment" means any retail business, organization, establishment, or facility open to the public within the City of New Ellenton, including without limitation:
 - a) grocery stores, convenience stores, and any other establishment engaged in the retail sale of non-prepared food;
 - b) commercial stores engaged in the retail sale of goods or services to the public including without limitation sporting goods stores; furniture and home-furnishings stores; clothing, shoe, and clothing-accessory stores; jewelry, luggage, and leather goods stores; department stores; hardware and home-improvement stores; book, craft, and music stores; florists and flower stores; and all other stores that sell supplies for household consumption or use;
 - c) pharmacies and other stores that sell medications or medical supplies;
 - d) alcoholic beverage stores; and
 - e) laundromats.

Section 2. Use of Face Coverings. Effective as of 12PM on July 24, 2020:

- 1) all customers are required to wear Face Coverings while inside the enclosed area of any Retail Establishment or Foodservice Establishment;
- 2) all Retail Establishments shall require staff to wear, and those staff shall wear, Face Coverings while working in areas open to the general public and areas in which interactions with other staff are likely in which social distancing of at least six feet cannot be observed; and
- 3) all Foodservice Establishments shall require staff who interact with customers (including, without limitation, delivery personnel) to wear, and those staff shall wear, Face Coverings while working.

Section 3. Exemptions. Face Coverings shall not be required:

- a) in outdoor or unenclosed areas appurtenant to Retail Establishments or Foodservice Establishments in which social distancing of at least six feet is possible and observed;

- b) for those who cannot wear a Face Covering due to a medical or behavioral condition;
- c) for patrons of Foodservice Establishments while they are dining;
- d) in private, individual offices;
- e) when complying with directions of law enforcement officers;

Section 4. Individual Violations: Civil Infraction. Any person violating the provisions of this Ordinance by failing to wear a Face Covering when required shall be guilty of a civil infraction, punishable by a penalty of not more than \$50. Each day of a continuing violation of this Ordinance shall be considered a separate and distinct offense.

Section 5. Responsible Person Violations: Civil Infraction. Any Responsible Person violating the provisions of this Ordinance by failing to require employees of the Establishment to wear a Face Covering when required shall be guilty of a civil infraction, punishable by a penalty of not more than \$50. Each day of a continuing violation of this Ordinance shall be considered a separate and distinct offense.

Section 6. Responsible Person Violations: Revocation of Permits and Licenses. In addition to the penalties established by Section 5 hereof, repeated violations of this Ordinance by a Responsible Person by failing to require employees of the Establishment to wear a Face Covering may, subject to all procedural protections set forth in the City of New Ellenton Code, result in the suspension or revocation of any occupancy permit or business license issued to business where the repeated violations occurred.

Section 7. Responsible Person Violations: Public Nuisance. In addition to the penalties established by Section 5 hereof, repeated violations of this Ordinance by a Responsible Person by failing to require employees of the Establishment to wear a Face Covering are additionally hereby declared to be a public nuisance, which may be abated by the City of New Ellenton by restraining order, preliminary and permanent injunction, or other means provided for by the laws of this State. The foregoing notwithstanding, every effort shall be made to bring Establishments into voluntary compliance with the terms of this Ordinance prior to the commencement of any enforcement action.

Section 8. Duties of Establishments and Responsible Persons. Establishments and Responsible Persons shall have a duty to enforce the provisions of this Ordinance only against employees of the Establishment. Without limiting the generality of the foregoing, no Establishment or Responsible Person shall have any duty to require that customers, visitors, or other members of the general public wear Face Coverings.

Section 9. Suspension of Contrary Local Provisions. During the Emergency Term (as defined in Section 12 below), any ordinance, resolution, policy, or bylaw of the City of New Ellenton that conflicts with the provisions hereof shall be and is hereby suspended and superseded.

Section 10. Expiration of Ordinance; Extension of Emergency Term. As provided by S.C. Code § 5-7-250(d), this Ordinance shall expire automatically as of the sixty-first day following the date of enactment (the "Emergency Term"). Notwithstanding the foregoing, however, Council may extend the Emergency Term by emergency ordinance for one or more additional terms, each of no more than sixty days, provided that the total duration of the Emergency Term shall not exceed six months without enacting an ordinance in the ordinary course.

Section 11. Severability. Should any provision, section, paragraph, sentence, or word of this 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 Ordinance as hereby adopted shall remain in full force and effect.

Section 12. Effective Date and Time. This emergency Ordinance shall take effect at 12PM on July 24, 2020.