

EMERGENCY ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF DORAVILLE, GEORGIA, UNDER SECTION 1.02 AND 2.12 OF THE CHARTER OF THE CITY OF DORAVILLE, GEORGIA, DECLARING LOCAL EMERGENCY OF THE NOVEL CORONAVIRUS DISEASE 2019 GLOBAL PANDEMIC AND OTHER PURPOSES

WHEREAS, the Mayor and Council of the City of Doraville, Georgia ("City"), are charged with the protection of the public health, safety, and welfare of the citizens of the City; and

WHEREAS, Section 1.02 of the Charter of the City of Doraville, Georgia ("City Charter"), empowers the Mayor and City Council to establish procedures for determining and proclaiming that an emergency situation exists within or without the City, and to make and carry out all reasonable provisions deemed necessary to deal with or meet such an emergency for the protection, safety, health or well-being of the citizens of the City; and

WHEREAS, Section 2.12 of the Charter of the City of Doraville, Georgia ("City Charter"), empowers the Mayor and City Council to adopt and provide for the execution of such ordinances, resolutions, rules, and regulations, not inconsistent with this Charter and the Constitution and the laws of the State of Georgia, which it shall deem necessary, expedient or helpful for the peace, good order, protection of life and property, health, welfare, sanitation, comfort, convenience, prosperity, or well-being of the inhabitants of the City of Doraville and may enforce such ordinances by imposing penalties for violation thereof.; and

WHEREAS, the World Health Organization has declared the novel coronavirus known as COVID-19 as a global pandemic ("COVID-19 Pandemic"); and

WHEREAS, on March 13, 2020, President Donald Trump declared a national emergency in response to the outbreak of COVID-19; and

WHEREAS, on March 14, 2020, Governor Brian Kemp declared that a public health emergency exists in the State of Georgia due to the spread of COVID-19 within Georgia; and

WHEREAS, the novel coronavirus disease 2019 global pandemic is a public emergency affecting and threatening the safety, health and well-being of the citizens of the City; and

WHEREAS, the City of Doraville, Georgia, has experienced an event of critical significance as a result of the Coronavirus disease; and

WHEREAS, COVID-19 can spread from person to person, and can result in no symptoms, minor symptoms, or serious illness causing permanent organ damage and death; and

WHEREAS, individuals age 65 or over or living with certain medical conditions identified by the CDC (members of Vulnerable Populations) and members of other populations identified by the CDC ("Other Populations at Risk") are at risk of severe and lasting harm to health or death from COVID-19; and

WHEREAS, COVID-19 also has been reported to cause severe and permanent damage to some children; and

WHEREAS, there is no vaccine or approved treatment for COVID-19; and

WHEREAS, the CDC has noted that COVID-19 spreads very easily and sustainably when an infected person (who may not be symptomatic, or have minor symptoms) talks, sneezes, or coughs in close proximity with others (within six feet); and

WHEREAS, the Governor, through Executive Orders 04.30.20.01, 05.12.20.02, 05.28.20.02, 06.11.20.01 and 06.29.20.02 has recognized the need to take extra precautions to protect certain vulnerable populations who meet the criteria for higher risk of severe illness as defined by the CDC and identified in Section III of the Governor's Executive Order 06.29.20.02 ("Vulnerable Populations"); and

WHEREAS, Executive Orders 04.30.20.01, 05.12.20.02, 05.28.20.02, 06.11.20.01 and 06.29.20.02 required Vulnerable Populations to continue to shelter in place, with exceptions that include participating in essential services and working, through July 15, 2020; and

WHEREAS, the Mayor and City Council desire to protect individuals in said Vulnerable Populations and Other Populations at Risk in a reasonable manner and as recommended by the CDC and by the Georgia Department of Public Health, while such individuals are participating in essential services and working; and

WHEREAS, the CDC, Dr. Kathleen Toomey (Georgia's Commissioner of Public Health), and Governor Kemp through Executive Order 05.12.20.02, and subsequent Executive Orders, have recommended that individuals wear face coverings over the nose and mouth to mitigate the spread of COVID-19 when they are in public places where they cannot practice social distancing (i.e., stay at least six feet away from other individuals who do not share the same household); and

WHEREAS, the CDC states that wearing a face covering over the nose and mouth is a recommended precaution designed to prevent symptomatic and asymptomatic individuals who have contracted COVID-19 from spreading it to other individuals; and

WHEREAS, Dr. Toomey and Governor Kemp have modeled the behavior of wearing face coverings as examples for Georgians to follows; and

WHEREAS, the positive COVID-19 diagnoses and case counts in the City of Doraville have risen significantly since May, 2020, and they continue to rise, increasing the transmission and mortality rate of the citizens of the City; and

WHEREAS, as indicated above, the State of Georgia remains under a state of emergency as a result of the COVID-19 pandemic; and

WHEREAS, Governor Brian Kemp has relaxed and/or removed many restrictions on businesses resulting in citizens and visitors interacting in public and commercial establishments; and

WHEREAS, the guidelines promulgated by the White House on re-opening America specifically call for a 14-day downward trajectory among other gating criteria, which guidelines are specifically incorporated by referenced; and

WHEREAS, the continued spread of COVID-19 in the City of Doraville is a threat to the health, safety and welfare of the Doraville community, especially individuals in Vulnerable Populations and Other Populations at Risk; and

WHEREAS, the number of cases is growing rapidly and if COVID-19 continues to spread in the City of Doraville and the surrounding communities, the number of persons relying on medical, pharmaceutical, and general cleaning supplies will increase, the private and public sector work force will be negatively impacted by absenteeism, and the demand for medical facilities may exceed locally available resources; and

WHEREAS, the CDC and public health officials expect that additional cases of COVID-19 will be identified in the coming days; and

WHEREAS, the CDC advises that the use of masks or cloth face coverings will slow the spread of COVID-19, and the CDC recommendations on PPE usage are hereby incorporated by reference; and

WHEREAS, taking measures to control outbreaks minimizes the risk to the public, maintains the health and the safety of the residents of the City of Doraville, and limits the spread of infection in our communities and within the healthcare delivery system; and

WHEREAS, it is vitally important that we all work together to decrease the widespread proliferation of COVID-19 among us all now rather than suffer the unfortunate and devastating medical and economic consequences later; and

WHEREAS, pursuant to the authority of O.C.G.A. §38-3-28(a), local governments are specifically empowered to enact rules and regulations as may be necessary for emergency management purposes; and

WHEREAS, O.C.G.A. §38-3-28(a) also grants political subdivisions the power to supplement the Governor's Executive Orders; and

WHEREAS, this Ordinance is intended to be entered with due regard to the uniform principle that masks or face coverings will slow the spread of COVID-19 as contemplated by O.C.G.A. §38-3-28(c); and

WHEREAS, this emergency ordinance is authorized by O.C.G.A. §§ 38-3-4 and 38-3-28 and the local control provisions of Governor Kemp's Executive order of June 29, 2020, and it is specifically intended to supplement such declaration, as amended, and should not be construed to be inconsistent therewith; and

WHEREAS, pursuant to O.C.G.A. §38-3-51, the Governor's declared public health emergency authorizes the Mayor and City Council to use emergency powers in O.C.G.A. §§ 38-3-1 through 38-3-64; and

WHEREAS, pursuant to O.C.G.A. §38-3-6, during an emergency, O.C.G.A. §§ 38-3-1 through 38-3-64 are supposed to be liberally construed to effectuate their purposes; and

WHEREAS, the United States Supreme Court has previously held that "[u]pon the principle of self-defense, of paramount necessity, a community has the right to protect itself against an epidemic of disease which threatens the safety of its members"; and

WHEREAS, the Mayor and City Council of the City of Doraville, Georgia, have determined that it is necessary to continue its Declaration of Emergency; and

WHEREAS, the following actions related to requiring face coverings in public are necessary and appropriate to balance the public's interest in being free from undue restrictions with the compelling public interest of providing for the health, safety and welfare of the residents of the City of Doraville and the surrounding communities, particularly those individuals who are members of Vulnerable Populations and Other Populations at Risk; and

WHEREAS, to prevent or minimize injury to people resulting from this event, certain actions are required.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and City Council of the City of Doraville, Georgia ("City Council"), that:

SECTION 1. The City Council hereby declares that based upon the above findings of fact, a state of emergency continues to exist within the City affecting the safety, health and well-being of citizens due to the novel coronavirus disease 2019 global pandemic ("COVID-19 Pandemic").

SECTION 2.

For the protection of the members of the public, including members of Vulnerable Populations and members of Other Populations at Risk, facial coverings or masks shall be required in public places within the City of Doraville to slow the spread of the novel coronavirus disease known as COVID-19 as follows:

(a) Definitions:

Facial 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, including the cartilage thereof, or a personal vehicle.

- (b) All persons entering a commercial establishment in the City of Doraville must wear a face covering or mask while inside such establishment. This requirement to wear a face covering does not apply to religious establishments; however, the use of face coverings is highly recommended during religious activity.
- (c) All restaurants, retail stores, salons, grocery stores, and pharmacies in the City of Doraville must require their employees to wear a face covering at all times while having face-to-face interaction with the public.
- (d) Any person who is unable to safely wear a face covering due to age, an underlying health condition, or is unable to remove the face covering without the assistance of others is exempt from this Ordinance.

- (e) Face coverings are not required in the following circumstances:
 - (1) In personal vehicles;
 - (2) When a person is alone in enclosed spaces or only with other household members;
 - (3) During outdoor physical activity, provided the active person maintains a minimum of six (6) feet from other people with whom they do not cohabitate at all times;
 - (4) While drinking, eating or smoking;
 - (5) When wearing a face covering causes or aggravates a health condition;
 - (6) When wearing a face covering would prevent the receipt of personal services; and
 - (7) When a person is ten (10) years of age or younger.
- (f) Violations of subsection (b) and (c) of this section may be enforced by a notice of ordinance violation issued by any police officer, code enforcement officer, or other authorized law enforcement official as provided below:
 - (1) A person who fails to comply with subsection (b) of this section shall not be punishable by imprisonment but shall be punishable by a civil fine of not more than \$25.00 on the first offense, not more than \$50.00 on the second offense, and not more than \$100 on the third offense and any subsequent offenses.
 - (2) A person who fails to comply with subsection (c) of this section shall not be punishable by imprisonment but shall be punishable by a civil fine of not more than \$25.00 on the first offense, not more than \$50.00 on the second offense, and not more than \$100 on the third offense and any subsequent offenses. For the purposes of subsection (c) of this section, "person" shall be defined as an individual associated with the business who has the control or authority and ability to enforce the social distancing requirements of this ordinance within the business such as an owner, manager or supervisor. "Person" may also include an employee or other designee that is present at the business but does not have the title of manager, supervisor, etc., but has the authority and ability to ensure that the requirements of this ordinance are met while the business is open to the public.
 - (3) A notice of violation may be served by delivery into the hands of the suspected violator.
 - (4) Violators may respond to a notice of ordinance violation either by signing the notice and returning the notice along with payment of the fine indicated thereon to the Doraville Municipal Court by the date indicated on the notice

or by appearing in the Municipal Court to plead no liability to the charged violation at the date and time provided on the notice. As a violation of this ordinance shall be deemed civil in nature, the government shall bear the burden to prove, by a preponderance of the evidence, that a defendant violated this ordinance. No proceedings for contempt or arrest shall be initiated for failure to appear on the return date on the notice.

- (5) Violators who fail to respond – by payment of the civil fine, entry of a “no liability” plea, or other mechanism as may be deemed appropriate by the Judge of the Doraville Municipal Court – to a notice of ordinance violation as provided for in paragraph 4 above may thereafter be served personally with an ordinance violation citation or accusation, and criminally prosecuted pursuant to Section 1-12 of the City of Doraville Code.
- (6) The foregoing notwithstanding, every effort shall be made to bring an individual into voluntary compliance with the terms of this ordinance prior to issuance of any Notice of Violation.

SECTION 3.,

This Ordinance shall become effective at 8:00 a.m. on the next day following the Mayor’s approval, and will continue to be in effect until 11:59 p.m. on August 31, 2020, or until it is extended, rescinded, superseded, or amended by an ordinance of the City.

SECTION 4. All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed to the extent of such conflict.

SECTION 5.. If any section, subsection, provisions, or clause of any part of this Ordinance shall be declared invalid or unconstitutional, or, if the provisions of any part of this Ordinance as applied to a particular situation or set of circumstances shall be declared invalid or unconstitutional, such invalidity shall not be construed to affect the portions of this Ordinance not so held to be invalid. It is hereby declared as the intent of the City Council that this Ordinance would have been adopted in its current form without the invalid or unconstitutional provision contained herein.

SO ORDAINED this 13th day of July 2020, by the Mayor and Council of the City of Doraville, Georgia.

CITY OF DORAVILLE, GEORGIA

By: _____

Joseph Geierman, Mayor

Attest:

Allison Japhy



City Clerk

