

**O-20-09
AS AMENDED**

**AN ORDINANCE REQUIRING FACE COVERINGS TO BE WORN IN PUBLIC
DURING THE COVID-19 PUBLIC HEALTH EMERGENCY**

WHEREAS, the World Health Organization declared COVID-19 a worldwide pandemic as of March 11, 2020;

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

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;

WHEREAS, on March 14, 2020, there were just 66 confirmed cases of COVID-19 in Georgia and only one confirmed death in Georgia attributed to COVID-19;

WHEREAS, just four months later, there have been 135,183 confirmed cases of COVID-19 in Georgia and 3,132 confirmed deaths, as of July 17, 2020;

WHEREAS, Georgia residents continue to be at risk of serious health complications, including death, from COVID-19;

WHEREAS, individuals age 65 or over or living with certain medical conditions identified by the Centers for Disease Control and Prevention (“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;

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

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

WHEREAS, Governor Kemp renewed his declaration of a public health state of emergency in Georgia April 8, 2020, and has done so again on multiple occasions, including most recently on July 15, 2020;

WHEREAS, since May, Governor Kemp has relaxed and/or removed many restrictions on businesses and establishments he had previously implemented, resulting in an increase in individuals interacting in public and in commercial establishments within the City of Decatur over the past weeks;

WHEREAS, the Governor, through multiple executive orders, nonetheless recognizes the need to take extra precautions to continue protecting certain vulnerable populations;

WHEREAS, the Governor also has repeatedly and strenuously urged Georgians to adopt a practice that is simple but highly effective at preventing the spread of COVID-19: wearing a face covering or mask when in public;

WHEREAS, specifically, Governor Kemp, through Executive Order 05.12.20.02 and subsequent Executive Orders, has recommended that individuals wear facial 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);

WHEREAS, most recently in his Executive Order 07.15.20.01 “Empowering a Healthy Georgia,” Governor Kemp ordered “that all residents and visitors to the State of Georgia are strongly encouraged to wear face coverings as practicable while outside their homes or place of residence, except when eating, drinking, or exercising outdoors;” and further ordered that “[a]ll residents and visitors of the State of Georgia shall practice sanitation in accordance with the guidelines published by the Centers for Disease Control and Prevention.”

WHEREAS, the Governor’s orders and directives with respect to wearing face coverings follow the CDC’s recommendations for basic sanitary and hygienic practices to prevent the spread of COVID-19;

WHEREAS, the CDC states that wearing a facial 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;

WHEREAS, the CDC recommends wearing cloth face coverings in public settings where other social distancing measures are difficult to maintain (e.g., grocery stores and pharmacies), especially in areas of significant community-based transmission;

WHEREAS, the CDC recommendations on usage of face coverings are hereby incorporated by reference;

WHEREAS, Governor Kemp, along with Dr. Kathleen Toomey, Georgia’s Commissioner of Public Health, have modeled the behavior of wearing face coverings as examples for Georgians to follow;

WHEREAS, consistent with and in furtherance of Governor Kemp’s emphasis on the need to wear face coverings, leaders of the judicial, legislative, and executive branches of State government have mandated the wearing of face coverings or masks in public facilities, to wit:

- In his Fourth Order Extending Declaration of Statewide Judicial Emergency filed July 15, 2020, the Chief Justice of the Georgia Supreme Court has ordered that any Georgia

court that decides to conduct in-person judicial proceedings must develop and implement operating guidelines and has directed use of the “Georgia Court Reopening Guide” as the template for such guidelines, which Reopening Guide lists as its first infection control measure that all court employees and members of the public be required to wear a mask or face covering when entering the court facility;

- When the Georgia General Assembly reconvened on June 15, 2020, the House of Representatives required that all House members and staff wear masks while on the Capitol grounds and required all visitors to House committee rooms to wear masks;
- On July 6, 2020, the State Board of Regents announced that beginning July 15, 2020, University System of Georgia institutions will require all faculty, staff, students, and visitors to wear an appropriate face covering while inside campus facilities/buildings where sufficient social distancing is not always possible;

WHEREAS, on July 1 and 2, 2020, Governor Kemp conducted a statewide “Wear a Mask Tour,” flying to seven Georgia cities to publicly emphasize the need for Georgians to “mask up to fight the spread of COVID-19;”

WHEREAS, Governor Kemp has stated publicly that he agrees with the policy that underlies a Savannah ordinance adopted on June 30, 2020 that requires the wearing of masks, i.e., “that everyone should be wearing a mask in public places;”

WHEREAS, as a densely populated, thriving intown community that serves as a center of commercial, civic, government, social, entertainment, academic, and religious activities, the City of Decatur has heightened risk of “community spread” as that term is defined by the CDC;

WHEREAS, the incidence of infection and death in DeKalb County continues to increase, signifying the continued spread of the highly contagious and deadly disease in the community in which the City of Decatur is located;

WHEREAS, as of July 17, 2020, DeKalb County to date has had 9,308 confirmed cases of COVID-19 and at least 187 deaths in DeKalb County have been attributed to COVID-19, representing 20% and 7% increases, respectively, in the week since July 9, 2020;

WHEREAS, while many individuals in and visitors to the City of Decatur have heeded Governor Kemp’s repeated urging to wear face coverings in public places, many have not;

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

WHEREAS, a large number of persons with serious infections can compromise the ability of the healthcare system in DeKalb County to deliver necessary care to the public;

WHEREAS, if the number of cases of COVID-19 continues to spread in the City of Decatur 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;

WHEREAS, as Governor Kemp has repeatedly stressed, it is vitally important that all Georgians 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;

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;

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

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

WHEREAS, this 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 July 15, 2020, and it is specifically intended to supplement such declaration, as amended, and should not be construed to be inconsistent therewith or with O.C.G.A. §§ 38-3-1 through 38-3-64;

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

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;

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;"

WHEREAS, the following actions related to requiring facial coverings in public are necessary and appropriate to balance the public's interest in not being unduly burdened with the compelling public interest of providing for the health, safety and welfare of the residents of the City of Decatur and the surrounding communities, particularly those individuals who are members of Vulnerable Populations and Other Populations at Risk.

NOW, THEREFORE, BE IT ORDAINED by the City Commissioners of the City of Decatur, Georgia, and it is hereby ordained by the authority of the same, that for the protection of members of the public, including members of Vulnerable Populations and members of other Populations at Risk, facial coverings or masks shall be required within the City of Decatur to slow the spread of COVID-19 as follows:

SECTION 1

(a) For purposes of this Ordinance, the following terms are hereby defined as follows:

Establishment means any business, store, or other place where goods or services are sold or provided as part of a commercial or non-profit venture, to which the public is invited or in which the public is permitted. The term establishment includes but is not limited to the following: (1) automobile dealerships, furniture or other showrooms for the display of merchandise offered for sale; (2) grocery, pharmacy, specialty, department and other stores which sell goods or merchandise; (3) service stations, stores or shops for the repair or maintenance of appliances, shoes, motor vehicles or other items or products; (4) barbershops, beauty shops, cleaners, laundromats and other establishments offering services to the general public; (5) video arcades, pool halls and other amusement centers; (6) the common areas of commercial, retail and office buildings; (7) the common areas of public buildings and structures; (8) banks, savings and loan offices, and other financial establishments; (9) hotels and motels and other places that provide accommodations to the public; and (10) restaurants, including indoor and outdoor dining areas.

Employee means any person who is employed by any employer in consideration for direct or indirect monetary wages of profit.

Facial covering or mask means a device to cover the nose and mouth of a person to impede the spread of saliva, respiratory droplets, 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 means any place other than an individual's home, including the curtilage thereof, or a personal vehicle.

(b) All persons entering an establishment in the City of Decatur shall wear a facial covering or mask while inside such establishment. This requirement to wear a facial covering does not apply to religious establishments; however, the use of facial coverings is highly recommended during religious activity.

(c) All establishments in the City of Decatur shall require their employees to wear a facial covering or mask at all times while having face-to-face interaction with the public.

(d) All persons within the City of Decatur shall wear a facial covering or mask when in an outdoor public place when it is not feasible to maintain at least six (6) feet of physical distance from another person who is not part of the same household.

(e) Any person who is unable to safely wear a facial covering or mask due to age or an underlying health condition or is unable to remove the facial covering or mask without the assistance of others is exempt from this Ordinance.

(f) Facial coverings or masks 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 others who are not part of the same household;
4. While drinking or eating;
5. When a licensed healthcare provider has determined that wearing a facial covering or mask causes or aggravates a health condition for the individual;
6. When wearing a facial covering or mask would prevent the receipt of personal services;
7. When complying with the directions of a law enforcement officer or for the purposes of verifying a person's identity, such as when purchasing alcohol, tobacco, or prescription drugs or when engaging in a financial transaction; and
8. Children under the age of ten (10) years.

(g) All establishments subject to this Ordinance shall post a sign in a clearly visible location near the front entrance stating the following: "Per City Ordinance, all persons must wear a mask or face covering while on the premise. Violators are subject to a civil penalty of up to \$100.00."

(h) Violations of Sub-Sections (b), (c) and (d) of this Section 1 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 Sub-Section (b) of Section 1 of this Ordinance shall be subject to a civil penalty of not more than \$25.00 on the first offense, not more than \$50 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 Sub-Section (c) of Section 1 of this Ordinance shall be subject to a civil penalty of not more than \$25.00 on the first offense, not more than \$50 on the second offense, and not more than \$100 on the third offense and any subsequent offenses. For the purposes of Sub-Section (c) of Section 1 of this Ordinance, “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 person who fails to comply with Sub-Section (d) of Section 1 of this Ordinance shall be subject to a civil penalty of not more than \$25.00 on the first offense, not more than \$50 on the second offense, and not more than \$100 on the third offense and any subsequent offenses.
4. A notice of violation may be served by delivery into the hands of the suspected violator.
5. Notwithstanding the foregoing, 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, including providing complimentary masks, explaining the importance of wearing facial coverings during this pandemic, and issuing verbal and written warnings.

SECTION 2

This Amended Ordinance shall become effective at 8:00 a.m. on July 21, 2020 and remain in effect until 11:59 p.m. on August 17, 2020, or until it is extended, rescinded, or amended by ordinance of the City Commission.

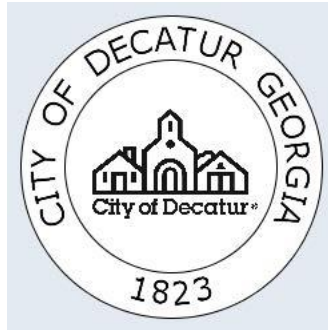
SECTION 3

Should any provision, paragraph, sentence, or word of this Ordinance be rendered or declared invalid by any final court of competent jurisdiction, the remaining provisions, paragraphs, sentences, or words of this Ordinance shall remain in full force and effect.

SECTION 4

Should any ordinance or part thereof be found to conflict with this Ordinance or the provisions thereof, then those sections contained herein shall be deemed controlling.

SO ORDAINED this 20th day of July, 2020.



Patricia M. Barnett

Mayor

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Attest: _____
City Clerk