

ORDINANCE NO. 026 - 2020

AN UNCODIFIED ORDINANCE BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA AMENDING *ORDINANCE NO. 014-2020*, AS AMENDED BY *ORDINANCE 022-2020* AND *ORDINANCE 024-2020*, TO MANDATE THAT INDIVIDUALS WEAR A FACE COVERING IN PUBLIC IN CERTAIN CIRCUMSTANCES; ESTABLISHING A MINIMUM COUNTY-WIDE REQUIREMENT, EXCEPT TO THE EXTENT OF A MUNICIPAL ORDINANCE IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ALL ORDINANCES INCONSISTENT HEREWITH; PROVIDING FOR TRANSMITTAL TO THE SECRETARY OF STATE AND PROVIDING FOR AN EFFECTIVE AND SUNSET DATE.

WHEREAS, the Board of County Commissioners of Monroe County, Florida (hereinafter “Board”) finds that COVID-19 presents a danger to the health, safety, and welfare of the public; and

WHEREAS, the Centers for Disease Control (CDC) advises that COVID-19 spreads mainly from person to person through respiratory droplets produced when an infected person coughs, sneezes, or talks; these droplets can land in the mouths or noses of people who are nearby or possibly be inhaled into the lungs; and studies and evidence on infection control report that these droplets usually travel around 6 feet (about two arms lengths); and

WHEREAS, the CDC advises that a significant portion of individuals with coronavirus lack symptoms (“asymptomatic”) and that even those who eventually develop symptoms (“pre-symptomatic”) can transmit the virus to others before showing symptoms. This means that the virus can spread between people interacting in close proximity—for example, speaking, coughing, or sneezing—even if those people are not exhibiting symptoms; and

WHEREAS, the CDC recommends wearing cloth face coverings in public settings where other social distancing measures are difficult to maintain in order to slow the spread of the virus and help people who may have the virus and do not know it from transmitting it to others; and

WHEREAS, the CDC does not recommend wearing cloth face covering for children under the age of 2, or anyone who has trouble breathing, or is unconscious, incapacitated or otherwise unable to remove the mask without assistance; and

WHEREAS, the CDC recommends only simple cloth face coverings for the general population and not surgical masks or N-95 respirators because these are critical supplies that must continue to be reserved for healthcare workers and other medical first responders; and

WHEREAS, cloth face coverings are relatively inexpensive and readily available as the CDC states they can be made from household items and provides online guidance for making “do-it-yourself” coverings for people that cannot or do not want to buy one from the increasing sources producing and selling coverings; and

WHEREAS, the Board finds it is in the best interest of public health, safety and welfare of the residents and workers of, and visitors to, the Florida Keys to require suitable face coverings in public locations to slow the spread of COVID-19; and

WHEREAS, the Board finds the inconvenience of an ordinance requiring the use of face coverings or other suitable face coverings is minimal compared to the risk to the health, safety, and welfare of the community were no such rule imposed; and

WHEREAS, the Board finds implementation of this ordinance is necessary for the preservation of the health, safety, and welfare of the community; and

WHEREAS, Section 1(f) of Article VIII of the Florida Constitution vests the Board with the authority to enact ordinances having countywide effect that are not inconsistent with state law, provided that such ordinance shall not be effective within a municipality that has adopted an ordinance in conflict with the County ordinance, to the extent of such conflict; and

WHEREAS, the State of Florida has not preempted local governments from regulating in the field of minimum health requirements with respect to COVID-19; and

WHEREAS, the County’s Emergency Management Director has issued interim rules requiring the use of face coverings pursuant to the authority vested in her by Section 11-3 of the County Code that are enforceable as misdemeanors by law enforcement through F.S. 252.47 and F.S. 252.50; and

WHEREAS, adopting regulations via ordinance would permit additional enforcement options through code compliance and injunctive relief; and

WHEREAS, 28 C.F.R. 36.208, the implementing regulations for the Americans with Disabilities Act states that the ADA does not require a public accommodation to permit an individual to participate in or benefit from the goods, services, facilities, privileges, advantages and accommodations of that public accommodation when that individual poses a direct threat to the health or safety of others; and customers with disabilities who may be unable, due to their disability, to wear a face mask may access the goods and services of the businesses through the provisions of curbside service or home delivery; and

WHEREAS, the Third District Court of Appeal has defined the term business establishment for purposes of tort liability to mean “a location where business is conducted, goods are made or stored or processed or where services are rendered.” *Publix Supermarkets, Inc. v. Santos*, 118 So.3d 317 (Fla. 3d DCA 2013); and

WHEREAS, the Florida Legislature has defined the term “transient public lodging establishment” to mean “any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for a period of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.” *See*, F.S. 509.013(4)(a)1; and

WHEREAS, on June 17, 2020, the Board of County Commissioners adopted Ordinance No. 014-2020 requiring people to wear face coverings when inside of business establishments, as that term was defined in the ordinance until the ordinance sunsets; and

WHEREAS, the number of infections has increased dramatically since the mask ordinance was adopted; and

WHEREAS, on June 26, 2020, the Emergency Management Director issued Emergency Directive 20-10, which expanded upon the requirements in Ordinance 014-2020 by mandating that facial coverings be carried by any person over the age of six who is away from home by requiring such persons to wear masks when unable to engage in social distancing from another person; and

WHEREAS, the Board desires to incorporate these new requirements into its ordinance so as to authorize additional enforcement mechanisms unavailable for enforcing an emergency directive; and

WHEREAS, the Florida Legislature has stated that “[s]afeguarding the life and property of its citizens is an innate responsibility of the governing body of each political subdivision of the state” such as Monroe County and its five municipalities; F.S. 252.38; and

WHEREAS, on July 15, 2020, the Board revised Ordinance 014-2020 to, *inter alia*, require that when an employee of a business tests positive for COVID19, the business shall shut down for a minimum of 3 days to sanitize; and

WHEREAS, State and Federal law preempts the County’s ability to impose such a restriction on certain types of businesses; and

WHEREAS, F.S. 162.21(5)(c) requires that the Board set an amount that a person issued a citation must pay in lieu of contesting a citation; and

WHEREAS, the Board finds that \$250 is a reasonable amount to impose as a fine on a person who does not wish to contest a citation; and

WHEREAS, the Board finds it necessary to clarify the ordinance to make it clear that a business operator, employee, or customer must wear a face covering while inside of any portion of a business establishment that is open to the public, except as specified;

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA:

Ordinance No. 024-2020 is hereby amended as follows:

SECTION 1. Findings. The above recitals are adopted by the Board as legislative findings.

SECTION 2. Definitions. For purposes of this ordinance, the following terms are defined as follows:

- (1) **Face Covering.** A “face covering” is a material that covers the nose and mouth. It can be secured to the head with ties or straps or simply wrapped around the lower face. It can be made of a variety of materials, such as cotton, silk, or linen. A cloth face covering may be factory-made or sewn by hand, or can be improvised from household items.
- (2) **Business establishment.** A “business establishment” means a location where any business is conducted, goods are made or stored or processed or where services are rendered. The term “business establishment” also includes locations where non-profit, governmental, and quasi-governmental entities facilitate public interactions and conduct business. The term shall include the entire premises of the business establishment, whether owned or leased, regardless of whether indoors or outdoors. The term does not include educational institutions operating within Monroe County, which have adopted their own protocols.
- (3) **Lodging establishment.** A “lodging establishment” shall have the same meaning as the term “transient public lodging establishment” has in F.S. 509.013(4)(a)1 (2019). A lodging establishment is a specific type of business establishment.
- (4) **Operator.** An “operator” shall mean any individual or entity that owns a business or controls the operation of the business, even if only for a period of time, regardless of the formal title or role held by that individual.
- (5) **Social Distancing.** “Social distancing” shall mean keeping space between yourself and other persons by staying a minimum of six (6) feet away from another person.

SECTION 3. Recommended standards of conduct.

- (1) **Vulnerable Populations.** Individuals older than 65 years of age and individuals with a serious underlying medical condition (such as chronic lung disease, moderate-to-severe asthma, serious heart conditions, immune-compromised status, cancer, diabetes, severe obesity, renal failure, liver

disease) should continue to stay at home. When leaving home, these individuals should follow social distancing and other general mitigation guidance. Those living with vulnerable individuals should be aware of the exposure risk that they could carry the virus back home after returning to work or other environments where distancing is not practiced. Vulnerable populations should affirmatively inform their employer that they are a member of a vulnerable population so that their employer can plan accordingly.

SECTION 4. Mandatory requirements.

- (1) Except as provided for in paragraph (4) of this Section, every person over the age of six (6) who is away from his or her residence shall wear a face covering when closer than 6 feet to another person with whom he or she does not reside
- (2) Every person over the age of six (6) who is away from his or her residence shall carry a face covering capable of immediate use.
- (3) Each operator shall establish rules for that business establishment that encourages social distancing, hand washing, and other protective measures for customers and employees based upon guidelines provided by the Centers of Disease Control and the State Department of Health.
- (4) An operator, manager, employee, customer or patron of a business establishment must wear a face covering while inside of any portion of that business establishment that is open to the public. The requirements of this paragraph do not apply to:
 - a. Restaurant customers or patrons while dining and/or consuming beverages while seated at a table.
 - b. A gym patron engaged in a workout or class where at least 6 feet of distancing exists with the next closest patron.
 - c. Barbershop or beauty salon customers or patrons when wearing a face covering would reasonably interfere with receiving services.
 - d. Business operators and employees who are in an area of a business establishment that is not open to customers, patrons, or the public, provided that 6 feet of distance exists between employees. When an operator or employee is in their place of employment but not within 6 feet of another person, that operator or employee does not need to wear a facial covering. ***This exception does not apply to operators and employees who are present in the kitchen or other food and beverage preparation area of a restaurant or food establishment.***
 - e. Bar patrons while seated and consuming beverages and/or food.

- f. A lodging establishment guest when inside of the lodging unit including but not limited to a hotel room, motel room, vacation rental unit, timeshare unit, or similar unit.
 - g. Participants in public meetings held pursuant to F.S. 286.011, provided that the participant without a face covering is engaged in social distancing.
- (5) An operator and/or employee of a business or lodging establishment shall ensure that every individual in that establishment complies with this section.
- (6) When a customer of a business establishment asserts that he or she has a disability that prevents the individual from wearing a mask or facial covering, the operator or employee of the business establishment may exclude the individual, even if they have a disability, as they pose a direct threat to the health and safety of employees and other customers when not wearing a facial covering, even if asymptomatic, and shall accommodate the disabled individual in a manner that does not fundamentally alter the operations of the business establishment nor jeopardize the health of that business's employees and other customers, such as providing curb service or delivery or other reasonable accommodation.

SECTION 5. Penalties and Enforcement. This ordinance may be enforced in the following manner:

- (1) **Quasi-Criminal Offense.**
- a. Any state, county, or municipal law enforcement officer may arrest or issue a notice to appear for any knowing and intentional violations committed in his or her presence or through procurement of an arrest warrant. Violations shall be prosecuted by the State Attorney of the 16th Judicial Circuit.
 - b. A person found in violation may be punished by up to 60 days in the County jail and/or a fine of up to \$500. Each day a violation of this ordinance occurs is considered a separate offense.
- (2) **Civil Citation.**
- a. A county or municipal code compliance or county, municipal, or state law enforcement officer may, upon observation of a violation by a person who does not immediately put on a face covering after receiving a warning, issue a notice to appear or civil citation to appear in County Court.
 - b. Any person or business establishment prosecuted under this subsection and found in violation of this ordinance may be punished by a fine of up to \$500.00.

- c. If a person issued a citation does not wish to contest the violation, that person may pay a fine of \$250 to the Clerk of Court in lieu of contesting the citation.
- (3) Administrative Notice of Violation
- a. A county or municipal code compliance officer may, upon discovery of a violation by a person who does not immediately put on a face covering after receiving a warning, issue a notice of violation and notice to appear before the Code Compliance board or special magistrate of that officer's jurisdiction.
 - b. Any person or business establishment found in violation of this ordinance may be fined pursuant to part I of Chapter 162, Florida Statutes.
- (4) Injunctive relief.
- a. The State Attorney of the 16th Judicial Circuit and/or the County Attorney may file an action for injunctive relief in Circuit Court seeking to enjoin violations that occur throughout the County, except for violations that occur in a municipality that has adopted an ordinance in conflict with this ordinance.
 - b. The City or Village Attorney for a municipality may file an action for injunctive relief in Circuit Court seeking to enjoin violations that occur with that municipality.
- (5) Private Right of Action. Any natural person may seek injunctive relief in the Circuit Court for the 16th Judicial Circuit to enforce violations of this section against a violator. Attorney's fees and costs incurred in an action to enforce this ordinance may be awarded to the substantially prevailing party at the discretion of the court.
- (6) Defenses. An owner, manager, and/or employee of a business establishment shall not be liable in any enforcement action taken under this section for the violations of a guest, customer, and/or patron if that owner, manager, and/or employee directed that guest, customer, and/or patron who refuses to wear a face covering to vacate the premises or face prosecution of trespass.

SECTION 6. Severability. If any section, subsection, sentence, clause, or provision of this ordinance is held by a court of competent jurisdiction to be invalid, the remainder of this ordinance shall not be affected by such invalidity.

SECTION 7. Applicability and Conflict. This ordinance is intended to have countywide application except within a municipality which has adopted an ordinance in conflict this this ordinance pursuant to Article VIII, Section 1 of the Florida Constitution. All County ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of said conflict.

SECTION 8. Effective Date. This Ordinance shall take immediate effect upon adoption and shall be filed with the Department of State.

SECTION 9. Sunset Date. Unless rescinded or extended by subsequent act of the Board, this ordinance shall sunset on June 1, 2021, subject to quarterly review.

SECTION 10. Codification. Due to the temporary nature of this ordinance, the Board directs the Clerk to send the ordinance to the Municipal Code for publication on its website but with instructions to not codify the ordinance within the Monroe County Code.

PASSED AND ADOPTED by the Board of County Commissioners of Monroe County, Florida, at a regular meeting of said Board held on the 19th day of August, 2020.



Mayor Heather Carruthers	<u>Yes</u>
Mayor Pro Tem Michelle Coldiron	<u>Yes</u>
Commissioner Craig Cates	<u>Yes</u>
Commissioner David Rice	<u>Yes</u>
Commissioner Sylvia Murphy	<u>Yes</u>

Attest: KEVIN MADOK, Clerk

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By: _____

As Deputy Clerk

By: _____

Mayor Heather Carruthers

FOR RECORD

2020 AUG 21 PM 5:32

MONROE COUNTY, FLA

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:

ROBERT B. SHILLINGER, JR.
COUNTY ATTORNEY
Date 8-20-20