

ORDINANCE

Year – 2020 Number 35

Authorizing a need for a face covering (mask) requirement in the City of Portsmouth due to the ongoing health crisis and public health emergency and to reduce and prevent the spread of Covid-19; to allow for enforcement and assessment of a city penalty by Portsmouth Public Health for a violation of said mandate. No funding is required for this legislation. Pursuant to Council Rule 5, this legislation is requested to be passed as an emergency in accordance with Section 10 of the Charter for the City of Portsmouth in order to facilitate administration, daily operation and avoid practical and legal entanglements.

**WHEREAS**, COVID-19 is a respiratory disease that can result in serious illness or death, caused by the SARS-CoV-2 virus, which is a new strain of coronavirus that had not been previously identified in humans and can easily spread from person to person. The virus is spread between individuals who are in close contact with each other (within about six feet) through respiratory droplets. It may be possible that individuals can get COVID-19 by touching a surface or object that has the virus on it and then touching their own mouth, nose, or eyes; and

**WHEREAS**, on January 30, 2020, the International Health Regulations Emergency Committee of the World Health Organization declared the outbreak of COVID-19 a public health emergency of international concern; and

**WHEREAS**, on January 31, 2020, Health and Human Services Secretary Alex M. Azar II declared a public health emergency for the United States to aid the nation's healthcare community in responding to COVID-19; and

**WHEREAS**, on February 1, 2020, the Ohio Department of Health issued a statewide Health Alert Network to provide local health departments with updated guidance for COVID-19; and

**WHEREAS**, on March 9, 2020, Governor Mike DeWine signed an Executive Order declaring a State of Emergency for the entire State of Ohio in relation to COVID-19 pursuant to the Governor's authority vested in him by the Constitution, the laws of the State of Ohio and in accordance with Revised Code section 5502.22; and

**WHEREAS**, the Governor's Executive Order declaring a State of Emergency for the entire State of Ohio urged all citizens to heed to the advice of the Department of Health and other emergency officials regarding COVID-19 in order to protect their health and safety; and

**WHEREAS**, on March 12, 2020, Ohio Department of Health Director Amy Acton signed an order prohibiting mass gatherings in the state of Ohio; and

**WHEREAS**, on March 13, 2020, President Donald J. Trump declared a National Emergency, invoking the Stafford Act and allowing the Federal Emergency Management Agency to coordinate disaster response and aid state and local governments in addressing the COVID-19 pandemic; and

**WHEREAS**, on March 13, 2020, the Portsmouth Board of Health declared a Public Health Emergency due to this imminent threat of an acutely hazardous disease, posing a high probability of widespread exposure to an infectious agent that poses a significant risk of substantial harm to a large number of people, including a large number of serious or long-term disabilities or a large number of deaths; and

**WHEREAS**, the CDC reports that people are most contagious when they are most symptomatic (the sickest); however, some spread might be possible before people show symptoms; and

**WHEREAS**, on March 22, 2020, under direction of Ohio Governor Mike DeWine, Ohio Department of Health Director Amy Acton, M.D. issued an order requiring all Ohioans to stay in their homes to prevent the further spread of COVID-19 until April 6, 2020 and the order was extended until May 1, 2020 and was amended on April 30, May 20 and May 22, 2020 to allow businesses to open with the requirement that face coverings be worn by all employees except in certain circumstances; and

**WHEREAS**, in the City of Portsmouth there is a current threat of an acutely hazardous disease, illness, or health condition; specifically, COVID-19, that is believed to be caused by the appearance of a novel infectious agent characterized by very high exposure and spread with a recommendation to limit activities as much as possible and to follow all current health orders; and

**WHEREAS**, face coverings can decrease the spread of respiratory droplets from people, and evidence has grown, as shown in numerous recent studies, that the use of face coverings decreases the spread of COVID-19 within populations; and

**WHEREAS**, after weighing the available information about the COVID-19 virus, consulting with Portsmouth Public Health, considering the guidance from Orders issued by the Ohio Department of Health and Governor DeWine, Council concludes that the safety of the citizens of Portsmouth is best protected by implementing a face covering requirement; and

**WHEREAS**, that for the immediate preservation of the public peace, property, health, or safety, and for the reasons stated in the preamble hereof, this Ordinance is declared to be an emergency measure and shall take effect at 8:00 a.m. on Tuesday, July 14, 2020. Now, therefore,

BE IT ORDAINED by the City Council of the City of Portsmouth, Ohio:

**SECTION I.** That for the purposes of this ordinance, "face covering" means a piece of cloth, fabric, or other material that fully covers the mouth and nose and that is secured with ear straps or otherwise tied so as to prevent slipping. A face covering shall be worn so as to cover the mouth and nose in compliance with the CDC's guidance on wearing face coverings. A face covering may be factory-made, sewn by hand, or improvised from household materials and can be made of a variety of synthetic and natural fabrics, including cotton, silk, or linen. Ideally, a face covering has two (2) or more layers. Face coverings include, but are not limited to, bandanas, scarves, medical masks, and cloth masks; and also include face shields that cover the nose and mouth, respirators, N95 masks or other personal protective equipment that provides a higher level of protection than a face covering defined in this Section.

**SECTION II.** For purposes of this ordinance, "surgical mask" means American Society for Testing and Materials (ASTM) Level 1, 2, or 3 approved procedural and surgical masks, to include an N95 respirator approved by the National Institute for Occupational Safety and Health (NIOSH) or a respirator from another country allowed by the Occupational Safety & Health Administration (OSHA), the Food & Drug Administration (FDA), or the Centers for Disease Control (CDC). A N95 respirator is not recommended for general public use or use in public settings as it should be reserved for healthcare providers and other medical first responders in a health care setting.

**SECTION III.** For purposes of this Ordinance, "place of business" means any office, facility, building, or structure operated by or for a for-profit business or non-profit enterprise and which is engaged in the sale or other transaction of any kind for anything of value in exchange for goods,

commodities, services, or temporary lodging and that is open to the any kind for anything of value in exchange for goods, commodities, services, or temporary lodging and that is open to the general public or by appointment, and includes, but is not limited to, grocery stores, retail stores, pharmacies, health care facilities, restaurants and bars (including outdoor seating for such facilities), banquet and catering facilities, personal care, grooming, and tattoo facilities, child care, day camp, and overnight camp facilities, hotels and motels (excluding a rented room or suite), gyms and similar facilities; but excluding religious facilities.

SECTION IV. All individuals within the City of Portsmouth shall wear a face covering over the individual's nose and mouth in accordance with the following:

- a. When entering, exiting, or waiting in line to enter a place of business that is open to the public, and while inside a place of business as to the areas within the place of business that are accessible to, and are intended for the use of, the public;
- b. When entering, exiting, or waiting in line to enter a City of Portsmouth operated building or facility that is open to the public, and while inside a City of Portsmouth operated building or facility as to the areas within such facility that are accessible to, and are intended for the use of, the public;
- c. In any public transportation such as a bus or other public transit vehicle regulated by the City of Portsmouth, as well as all Portsmouth airports, bus and train stations or stops. This includes but is not limited to a taxi or ridesharing vehicle or any other vehicle for hire, even if the vehicle is privately owned; however, this provision does not apply to people traveling alone or with household members or friends in their personal vehicles;
- d. In certain high-density occupational settings where social distancing is difficult, such as manufacturing, construction, and agriculture and to include businesses or operations within North American Industry Classification System (NAICS) sectors 311 to 339 (manufacturing), 236 to 238 (construction), and 111, 112, 1151, and 1152 (agriculture);
- e. Workers in long term care facilities (LTC), including skilled nursing facilities (SNF), adult care homes (ACH), family care homes (FCH), mental health group homes, and intermediate care facilities for individuals with intellectual disabilities (ICF-IID) shall wear a surgical mask;
- f. Health care facilities other than LTC facilities must follow the face covering requirements in the CDC Infection Control Guidance for Healthcare Professionals about Coronavirus (COVID-19);
- g. In any outdoor space or outdoor place where or when a person is unable to maintain or does not maintain physical separation of not less than six feet from others who are not members of their own household.
- h. County government agencies, with facilities owned or operated within the city of Portsmouth, are hereby ordered to have their on-site workers wear face coverings when they are or may be within six (6) feet of another person. Public-facing operations of County government agencies, with facilities owned or operated within the city of Portsmouth, must follow the requirements for places of business established in this Ordinance. All employees and members of the public shall be required to wear a face covering when entering, exiting, or within County government facilities owned or operated within the city of Portsmouth when they are or may be within six (6) feet of another person.

SECTION V. All places of business shall require all employees, contractors, volunteers, and any other individuals that interact with the public to wear a face covering, and all places of business shall only sell or otherwise enter into any transaction of any kind for anything of value in exchange for goods, commodities, services, or provide temporary lodging to those who comply with this ordinance. Any manager, owner, or person in charge of a place of business who fails or refuses to comply with this ordinance may be in violation of this ordinance.

SECTION VI. The requirement to wear a face covering through this Ordinance does not apply in the following situations:

- a. Any individual who cannot wear a face covering because of a medical condition, mental health condition or developmental disability, or who is unable to remove the face covering without assistance, and any individual who should developmental disability, or who is unable to remove the face covering without

assistance, and any individual who should not wear face coverings under the CDC guidance. An individual is not required to produce medical documentation of the condition or disability; however, failure to produce medical documentation of the condition or disability may result in the imposition of a civil penalty as provided in Section 9 of this Ordinance.

- b. Individuals under 6 years old;
- c. An individual that is actively eating or drinking. If a patron within a restaurant, bar, or banquet or catering facility and is not seated at a table or at a bar, a face covering is required;
- d. Seeking to communicate with someone who is hearing-impaired in a way that requires the mouth to be visible;
- e. When giving a speech for a broadcast or to an audience;
- f. Working at home or while in a personal vehicle;
- g. When temporarily removing a face covering to secure government or medical services or for identification purposes;
- h. Individuals who would be at risk from wearing a Face Covering at work, as determined by local, state, or federal regulations or workplace safety guidelines;
- i. When wearing a face covering is impeding visibility to operate equipment or a vehicle;
- j. A child whose parent, guardian, or responsible person has been unable to place the face covering safely on the child's face;
- k. School individuals (including students, administrators, and teachers) on or in school or school district facilities, so that schools and school districts may follow the regulations and guidelines promulgated by their governing bodies and the Ohio Department of Education. For this Ordinance, "school or school districts" means any public, private, or charter school or institution that provides education for any or all of the following grades or education: kindergarten through twelfth grade; or a university, college, or similar post-secondary institution;
- l. In settings where it is not practicable or feasible to wear a face covering such as when receiving dental services, medical treatments, while swimming, or while acting as an on-duty lifeguard;
- m. Walking or exercising outdoors so long as physical separation of not less than six feet is maintained, or while walking or exercising outdoors with other members of the same household;
- n. While actually engaged in exercising in a gym or other similar indoor facility so long as physical separation of not less than six feet is maintained and the individual wears a face covering at all times when not actually engaged in exercising;
- o. When an individual is in his or her work office, conference room, or other workspace not intended for use by the general public, so long as physical separation of not less than six feet is maintained;
- p. When inside a personal or commercial vehicle either parked or moving that is not a vehicle described in Section 4(c);
- q. Individuals while acting in their official capacity as a public safety employee or emergency responder when wearing a face covering would interfere with or limit their ability to carry out their official duties or functions. These include police officers, firefighters and other public safety or emergency medical personnel that support public safety functions;
- r. Individuals complying with the directions of public safety employees or emergency responders as described in Section 6(q);
- s. Individuals inside religious facilities;
- t. Facilities owned and operated by the Federal Government are exempt from this order.

SECTION VII. Portsmouth Public Health shall have the authority to investigate and is directed to enforce the provisions of this ordinance.

SECTION VIII. If Portsmouth Public Health observes violation(s) by places of businesses failing to enforce the face covering requirements of this ordinance, the following schedule of civil penalties shall be imposed on a place of business:

- a. For a first violation, a warning of violation shall be issued;

- b. For a second violation, a fine of \$500.00 shall be issued;
- c. For a third violation and for each subsequent violation, a fine of \$1,000.00 shall be issued.

SECTION IX. If Portsmouth Public Health observes violation(s) by individuals failing to comply with the face covering requirements of this ordinance, the following schedule of civil penalties shall be imposed on individuals:

- a. For a first violation, a warning of violation shall be issued;
- b. For a second violation and for each subsequent violation, a fine of \$25.00 shall be issued.

SECTION X. Violators have the right to appeal civil penalties pursuant to and in accordance with Portsmouth City Health Code Section 203.08.

SECTION XI. For those individuals cited for a violation of this Ordinance who have, but who failed to produce medical documentation of, a condition or disability that would constitute an exemption as defined in Section 6(a), said individuals will be afforded the opportunity to provide documentation of the condition or disability as part of their appeal as provided under Section 10 of this Ordinance.

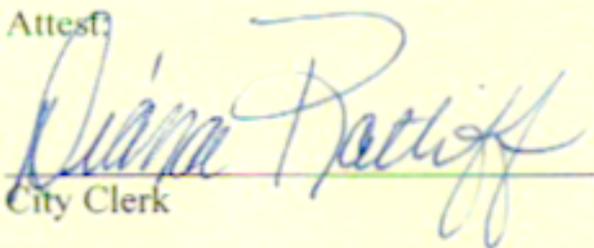
SECTION XII. This ordinance is hereby declared to be an emergency measure and upon signature by the Mayor shall take full force and effect at 8:00am on Tuesday July 14, 2020 and shall remain in effect until such time as all governing public health orders associated with the COVID-19 pandemic expire.

SECTION XIII. That this Ordinance was passed and all actions and deliberations of the Council relating thereto were conducted in meetings open to the public pursuant to Section 121.22 of the Ohio Revised Code.

SECTION XIV. This being an administrative ordinance as provided for in Section 12 of the Charter of the City of Portsmouth, Ohio, and passed as an emergency measure, shall be in force and effect from and after its passage.

Passed this 13<sup>th</sup> day of July, 2020.

Attest:

  
City Clerk

  
Mayor