

ORDINANCE NO. 5293

AN ORDINANCE TO PREVENT THE SPREAD OF THE NOVEL CORONAVIRUS, SARS-CoV-2, AND THE DISEASE IT CAUSES, COMMONLY REFERRED TO AS COVID-19 BY REQUIRING FACE COVERINGS IN CERTAIN INDOOR AND OUTDOOR LOCATIONS.

WHEREAS, on March 11, 2020, the World Health Organization declared the outbreak of the novel coronavirus, SARS-CoV-2, and the disease it causes, commonly referred to as COVID-19, a pandemic (for reference in this ordinance, this virus and the disease that it causes are referred to as “COVID-19”); and

WHEREAS, on March 12, 2020, Governor Ralph S. Northam issued Executive Order Number Fifty-One (“EO 51”) declaring a state of emergency for the Commonwealth of Virginia because of the COVID-19 pandemic; EO 51 acknowledged the existence of a public health emergency arising from the COVID-19 pandemic and that it constitutes a “disaster” as defined by Virginia Code § 44-146.16 because of the public health threat presented by a communicable disease anticipated to spread; and

WHEREAS, on March 14, 2020, effective at 5:00 p.m. and extending through June 10, 2020, at 5:00 p.m., or as may be amended by the City Council, the City Manager, in his capacity as Director of Emergency Management, issued a Declaration of Local Emergency applicable throughout the entire City of Alexandria, Virginia, pursuant to authority granted pursuant to City Code Section 4-3-5, Virginia Code Sections 44-146.21 and 15.2-1413, which City Declaration was unanimously consented to by the City Council on March 14, 2020, pursuant to City Resolution No. 2928, as required by applicable law; on June 9, 2020, the City Manager extended such Declaration of Local Emergency through September 30, 2020 which extension was unanimously consented to by the City Council on June 9, 2020; and

WHEREAS, COVID-19 spreads from person to person and, at this time, it appears that COVID-19 is spread primarily through viral respiratory droplets, which are expelled when an infected person coughs, sneezes, talks, sings, or engages in physical activity; and confined spaces when people are in close contact with one another (within about six feet) increase the ability of individuals to breathe in these respiratory droplets, contract COVID-19, and is more likely to spread COVID-19 within the community; (See *Xponential Fitness v. Arizona*, No CV-20-01310-PHX-DJH, 2020 WL 3971908 at *1); [World Health Organization Scientific Brief, July 9, 2020](#)) and

WHEREAS, COVID-19 is extremely easy to transmit, can be transmitted by infected people who show no symptoms, and the population has not developed herd immunity (See *Xponential Fitness v. Arizona*, No CV-20-01310-PHX-DJH, 2020 WL 3971908 at *1) ; and

WHEREAS, at this time, there is no known cure, no effective treatment, no vaccine; and because people may be infected but asymptomatic, they may unwittingly infect others (See *South Bay United Pentecostal Church v Newsom*, 140 S. Ct. 1613 (May 29, 2020) (Roberts concurring in denial of application for injunctive relief); on the fact that there is no effective treatment as of the date of this ordinance, see also [WHO Report: Coronavirus disease \(COVID-](#)

[19\) advice for the public: MythBusters](#), [Mayo Clinic: Coronavirus disease 2019 \(COVID-19\)](#)); and

WHEREAS, the World Health Organization, the United States Centers for Disease Control and Prevention (“Centers for Disease Control”) and the Virginia Department of Health have identified several behaviors and practices that are fundamental in controlling the spread of COVID-19 in the community: frequently washing hands, sanitizing frequently touched surfaces, wearing a cloth face covering when in public, maintaining a separation of at least six feet between people who do not regularly live together, limiting the size of gatherings in public places, and limiting the duration of gatherings; (See [CDC Considerations for Events and Gatherings July 2020](#), [CDC Consideration for Restaurants and Bars July 17, 2020](#), and [Virginia Department of Health COVID 19 Resources](#)); and

WHEREAS, with respect to people wearing face coverings when in public, current evidence suggests that transmission of COVID-19 occurs primarily between people through direct, indirect, or close contact with infected people through infected secretions such as saliva and respiratory secretions, or through their respiratory droplets, which are expelled when an infected person coughs, sneezes, talks or sings; and some outbreak reports related to indoor crowded spaces have suggested the possibility of aerosol transmission, combined with droplet transmission, for example, during choir practice, in food establishments, or in fitness classes; (See [World Health Organization Scientific Brief, July 9, 2020](#)); and

WHEREAS, the Centers for Disease Control states that cloth face coverings are strongly encouraged in settings where persons might raise their voice (e.g., shouting, chanting, singing) (See [CDC Report Considerations for Events and Gatherings July 7, 2020](#)); and

WHEREAS, the Centers for Disease Control advises, in restaurants: (i) wearing cloth face coverings when less than six feet apart from other people or indoors; (ii) wearing face coverings as much as possible when not eating; (iii) maintaining a proper social distancing between persons who do not regularly live together; and (iv) sitting outside when possible (See [CDC Personal and Social Activities Website dated July 30, 2020](#)); and

WHEREAS, for these and related reasons, the Virginia Department of Health has stated that those businesses that operate indoors and at higher capacity, where physical distancing “recommendations” are not observed, sharing objects is permitted, and persons are not wearing cloth face coverings, create higher risk for the transmission of COVID-19 (See [VHD Website](#)); and

WHEREAS, since Governor Northam issued EO 51 on March 13, 2020, he has issued several more Executive Orders jointly with Orders of Public Health Emergency issued by M. Norman Oliver, MD, MA, State Health Commissioner, pertaining to COVID-19; as of the date of adoption of this ordinance, “Executive Order Number Sixty-Seven (2020) and Order of Public Health Emergency Seven, Phase Three Easing of Certain Temporary Restrictions Due to Novel Coronavirus (COVID-19)” (collectively referred to as “EO 67”), which became effective at 12:00 a.m. on July 1, 2020, is in effect; and

WHEREAS, the City of Alexandria is an urban jurisdiction situated in the metropolitan Washington, DC region with a compact downtown area that attracts visitors from around the region, and across the country and world, and includes workers who live outside the City and residents who regularly visit other jurisdictions, making it particularly susceptible to the spread of COVID-19.

NOW THEREFORE, THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Sec. 1. Purpose

For the reasons stated in the recitals, the purpose of this ordinance is to prevent the spread of COVID-19.

Sec. 2. Authority

This ordinance is authorized by [Charter Section 2.04\(h\)](#) “to make and enforce all regulations necessary to preserve and promote public health and sanitation and protect the inhabitants of the city from contagious, infectious or other diseases.” [Section 15.2-1102](#) of the State Code generally and [Section 2.01](#) of the City Charter grants the authority for a City to exercise all powers, not expressly prohibited by the state code or the constitution, that are necessary “to promote the general welfare of the city and the safety, health, peace, good order, comfort, convenience and morals of its inhabitants.”

Sec. 3. Definitions

The following definitions apply to this ordinance:

- A. “Face covering” means an item normally made of cloth or various other materials, often with elastic bands or cloth ties, that is secured over the wearer’s nose and mouth in an effort to contain or reduce the spread of potentially infectious respiratory secretions at the source (i.e., the person’s nose and mouth).

- B. “Physical Distancing” means maintaining the physical distance of separation, which may change depending on the activity an individual is engaged in, as required by any applicable Executive Order of the Governor or Order of Public Health Emergency of the State Health Commissioner. In the event there is no other applicable requirement, “physical distancing” means maintaining at least six feet of distance between persons who do not regularly live together.

- C. “Public place” means any place
 - 1. That is:
 - i. indoors, other than a person’s residence or personal vehicle, or
 - ii. outdoors where physical distancing between persons not living in the same household cannot be maintained, and
 - 2. generally open to the public including, but not limited to, public parks and open spaces, sidewalks, trails, retail stores, food establishments, theaters, personal care and personal grooming services, common areas of condo or apartment buildings, and transportation other than a personal vehicle.

Sec. 4. Face Coverings

A. *Face coverings required.* Face coverings must be worn by all persons in public places except as provided in Sections 4(B).

B. *Exemptions.* The requirements of this ordinance do not apply to the following persons:

1. *Children and Students.*

- i. Children 10 years of age and under; provided, that children under 10 years of age may be required to wear face coverings if a plan submitted to the Commonwealth for a school or other facility where children congregate so requires;
- ii. students in daycare centers or participating in-person classes in K-12 education or institutions of higher education shall be governed by the plans submitted to the Commonwealth for such institutions, if one exists, and not by this ordinance.

2. *Medical Condition or Disability.* Persons for whom:

- i. wearing a face covering poses a substantial mental or physical health risk, such as persons who have trouble breathing while wearing a face covering or are unconscious, incapacitated, or otherwise unable to remove the face covering without assistance;
- ii. persons with a health condition preventing the use of a face covering;
- iii. persons with a disability preventing the use of a face covering, or
- iv. persons seeking to communicate with the hearing impaired and for which the mouth needs to be visible.

Any person who declines to wear a face covering pursuant to this exception shall not be required to produce or carry medical documentation verifying the stated condition nor shall the person be required to identify the precise underlying medical condition.

3. *Physical Activity.* While persons are swimming, biking, jogging, or engaged in other physical activity where wearing a face covering has been determined to pose a health risk. Additionally, any outdoor activity considered “Recreational Sports” under the Governor’s Executive Order 67 shall be governed by that Executive Order as the same may be amended, and not by this ordinance.

4. *Eating or drinking.* While a person is actively eating food or drinking a beverage. Face coverings are still required to be worn while waiting to receive food or beverages, or during substantial breaks between periods of eating and drinking.

5. *Work Conditions.* If wearing a face covering would subject the person to an unsafe work condition, as determined by federal, state, or local occupational safety regulators or workplace safety guidelines.

6. *Government or medical services.* When temporary removal of the face covering is necessary to secure government or medical (including dental) services.

7. *Religious rituals.* Face coverings may be removed to participate in a religious ritual.

D. *Responsibility of adults accompanying minors.* Adults accompanying minors between the ages of 10 years old and 17 years old must attempt to prompt the minors to wear face coverings while in public places.

Sec. 7. Effect of More Restrictive Executive Order or Order of Public Health Emergency.

This ordinance, or any part thereof, shall not be effective if there is a more restrictive requirement in an Executive Order or an Order of Public Health Emergency in effect.

Sec. 8. Compliance

If the City Manager or his designee determines that a person subject to this ordinance is not in compliance, he will request compliance and work with the person to obtain voluntary compliance including the provision of a covering with no cost to the person.

D. Injunctive relief.

The City, the City Council, and any City officer authorized by law, may seek to enjoin the continuing violation of any provision of this ordinance by bringing a proceeding for an injunction in any court of competent jurisdiction.

Sec 9. Duration

This ordinance is effective 12:00 a.m., October 1, 2020 and expires at the time the Local Declaration of Emergency expires, unless amended by the City Council; or when the waiver of Virginia Code § 18.2- 422, currently established in EO 67, Section (C)(3), or as it may be further amended or superseded, ends.

Sec. 10. Effect of this Ordinance on the Powers of the Director of Emergency Management.

This ordinance does not affect the powers of the City Manager, acting as the Director of Emergency Management, pursuant to Virginia Code § 44-146.21 during the COVID-19 disaster.

Sec. 11. Severability.

It is the intention of the City Council that any part of this ordinance is severable. If any part is declared unconstitutional or invalid by the valid judgment or decree of a court of competent jurisdiction, the unconstitutionality or invalidity does not affect any other part of this ordinance

JUSTIN M. WILSON
Mayor

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