

Date: July 3, 2020

To: Councilmember Mann and Members of Budget & Finance Committee

From: Paula Boggs Muething, City Solicitor *PBM*

202000857

Subject: **Emergency Ordinance – Requiring Facial Coverings (B-version)**

Transmitted herewith is an ordinance captioned as follows:

REQUIRING facial coverings to be worn in certain circumstances during the pendency of the Mayor's June 29, 2020 emergency declaration for the safe reopening of Cincinnati during the COVID-19 pandemic.

PBM/CMZ/(lnk)
Attachment
316723

EMERGENCY

City of Cincinnati

CMZ/B PMB

An Ordinance No. _____

-2020

REQUIRING facial coverings to be worn in certain circumstances during the pendency of the Mayor's June 29, 2020 emergency declaration for the safe reopening of Cincinnati during the COVID-19 pandemic.

WHEREAS, COVID-19 is a respiratory disease that can result in serious illness or death and can be easily spread from person to person; and

WHEREAS, the Centers for Disease Control and Prevention ("CDC") reported over 2,545,250 cases of COVID-19 in the United States, resulting in over 126,369 deaths; and

WHEREAS, on March 9, 2020, the Ohio Department of Health announced confirmed cases of COVID-19 in the State of Ohio that created a dangerous condition that may affect the health, safety, and welfare of the citizens of Ohio; and

WHEREAS, on that same date, Governor Mike DeWine declared a state of emergency in Ohio to protect the well-being of the citizens of Ohio from the dangerous effects of COVID-19, and to assist in protecting the lives, safety, and health of the citizens of Ohio; and

WHEREAS, COVID-19 endangers the lives of the citizens of Cincinnati, creating emergency conditions for life and public safety and disrupting commerce; and

WHEREAS, the CDC reports that people are most contagious when they are most symptomatic (the sickest) but that some spread is possible before an individual shows symptoms and some contagious persons will remain asymptomatic; and

WHEREAS, on March 22, 2020, under the direction of 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 has been since amended on April 30, May 20, and May 22, 2020 to allow businesses to open with the recommendation that facial coverings be worn except in certain circumstances; and

WHEREAS, on March 11, 2020, the Mayor of the City of Cincinnati declared a local emergency due to the COVID-19 pandemic; and

WHEREAS, as businesses have re-opened, more people are traveling and gathering throughout the state and within the City of Cincinnati; and

WHEREAS, a local and statewide state of emergency continues to exist with limits on mass gatherings and recommendations for social distancing; and

WHEREAS, as a result of the above-described emergency, there is a continuing need to protect all citizens and guests of the City of Cincinnati from the risks relating to the COVID-19 pandemic; and

WHEREAS, the CDC recommends wearing facial coverings in public where other physical distancing measures are difficult to maintain to help prevent the spread of COVID-19 from asymptomatic or unknowing carriers to others; and

WHEREAS, the World Health Organization has published information that wearing facial coverings significantly reduces the spread of COVID-19; and

WHEREAS, requiring facial coverings to be worn by any person in an indoor public place within the City of Cincinnati best promotes health, safety, and efforts to limit the spread of COVID-19 necessary to protect public health and safety, and is needed for the continuity of social and commercial life during the state of emergency while enabling the continuation of essential services, businesses, and travel; and

WHEREAS, after weighing the known information about the COVID-19 virus, consulting with the Cincinnati Health Department and Health Commissioner, and considering the guidance from the Ohio Department of Health, City Council concludes that the safety of City of Cincinnati citizens is best protected by implementing a requirement to wear facial coverings in indoor public places as set forth in this ordinance; and

WHEREAS, the purpose of this ordinance is to encourage individuals to comply with health recommendations to minimize the spread of COVID-19 and keep people safe, and is not intended to be punitive; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That all individuals within the City of Cincinnati shall wear a facial covering over the individual's nose and mouth in the following situations and locations:

a. When entering, exiting, or waiting in an indoor line to enter a place of business that is open to the public, and while inside a place of business in the areas within the place of business that are accessible to, and are intended for the use of, the public.

For purposes of this Ordinance, "place of business" means any facility, building, or structure operated by or for a business 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 general public or by appointment, and includes, but is not limited to: grocery stores; retail stores; pharmacies; health care facilities; restaurants and bars while indoors; hotels and motels (excluding the rented room or suite); gyms and similar facilities, but does not include religious facilities.

b. When entering, exiting, or waiting in an indoor line to enter a City of Cincinnati-operated building or facility that is open to the public, and while inside a City of Cincinnati-operated building or facility in the areas within such City of Cincinnati facility that are accessible to, and are intended for the use of, the public.

c. In any public transportation vehicle, such as a streetcar, bus, or other public transit vehicle, a taxi or ridesharing vehicle, or any other vehicle for hire.

Section 2. That all places of business shall require all employees that interact with the public to wear a facial covering, and all places of business may refuse to sell or otherwise enter into any transaction of any kind for anything of value in exchange for goods, commodities, services, or provide temporary lodging with those who do not comply with this Ordinance. This requirement shall not apply to employees in the situations where the Ohio Department of Health has ordered that facial coverings are not required, including but not limited to the following:

- a. Where facial coverings in the work setting are prohibited by law or regulation;
- b. Where facial coverings are in violation of documented industry standards;
- c. Where facial coverings are not advisable for health reasons;
- d. Where facial coverings violate businesses' documented safety policies;
- e. Where the employee is working alone in an assigned work area not open to the public;
and
- f. Where there is a functional (practical) reason for an employee not to wear a facial covering.

Employers or business operators must provide written justification upon request by the City as to why an employee is exempt from wearing a facial covering.

Section 3. That the requirement to wear a facial covering imposed by this Ordinance does not apply to the following:

- a. Any individual
 1. who cannot wear a facial covering because of a medical condition, mental health condition, or developmental disability;
 2. who is unable to remove the facial covering without assistance; or
 3. who should not wear facial coverings under current Centers for Disease Control and Prevention (“CDC”) guidance.

An individual is not required to produce medical documentation of the condition or disability, except an employer may require such documentation from an employee in accordance with state and federal law.

- b. Individuals under 6 years old.
- c. Restaurant and bar patrons while eating or drinking or while seated outdoors. The facial covering requirements otherwise apply to the indoor spaces of a restaurant or bar.
- d. 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 purposes of 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.

- e. In settings where it is not practicable or feasible to wear a facial covering such as when receiving dental services, medical treatments, or while swimming.
- f. 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 facial covering at all times when not actually engaged in exercising.
- g. When an individual is in his or her work office, conference room, or other workspace not intended for use by the general public.
- h. When inside a personal or commercial vehicle either parked or moving that is not a vehicle described in Section 1(c).
- i. Individuals while acting in their official capacity as a public safety employee or emergency responder when wearing a facial covering would interfere with or limit their ability to carry out their official duties or functions. These include police and peace

officers, firefighters, and other public safety or emergency medical personnel who support public safety operations.

- j. Individuals complying with the directions of public safety employees or emergency responders as described in 3(i).

Section 4. For the purposes of this Ordinance, “facial 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 facial covering may be factory-made or may be handmade and improvised from household materials. Facial coverings include, but are not limited to, bandanas, scarfs, medical masks, and cloth masks, and also include respirators, N95 masks or other personal protective equipment that provides a higher level of protection than a facial covering defined in this Section. A facial covering shall be worn so as to cover the mouth and nose in compliance with the CDC's guidance on wearing facial coverings.

Section 5. That whoever violates this Ordinance is subject to a civil penalty in the amount of \$25.00. Any person who receives a civil penalty for violation of this Ordinance may appeal to the Office of Administrative Hearings in the same manner as a person charged with a civil offense, and any such appeal shall be governed by the provisions of Cincinnati Municipal Code Title XV, “Code Compliance and Hearings.”

Section 6. That the proper City officials, including the Board of Health and its employees, are authorized to do all things necessary and proper to carry out the terms of Sections 1-5 hereof. The Board of Health shall provide to the Council a regular report of planning, monitoring, responding, and data collection on outcomes related to any enforcement pursuant to this legislation.

Section 7. That this ordinance shall be effective during the pendency of the Declaration of Emergency issued by the Mayor effective June 29, 2020.

Section 8. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective July 9, 2020. The reason for the emergency is the immediate need to take action that protects the health and safety of the citizens and guests of the City of Cincinnati.

Passed: _____, 2020

John Cranley, Mayor

Attest: _____
Clerk

