

ADOPTED BY THE
MAYOR AND COUNCIL

June 30, 2020

ORDINANCE NO. 11767

RELATING TO PUBLIC HEALTH AND SAFETY AND THE PREVENTION OF COMMUNITY-BASED SPREAD OF INFECTIOUS DISEASE; REQUIRING PERSONS TO WEAR FACE COVERINGS WHEN THEY ARE IN PUBLIC PLACES AND CANNOT EASILY MAINTAIN A CONTINUOUS PHYSICAL DISTANCE OF AT LEAST SIX (6) FEET FROM OTHER PERSONS; DECLARING VIOLATIONS TO BE A CIVIL INFRACTION AND PROVIDING PENALTIES; AND DECLARING AN EMERGENCY.

WHEREAS, Chapter IV, Section 1(10) of the Tucson Charter provides that the City has the power “to make regulations to prevent the spread of diseases;” and Chapter VII, Section 1(28) of the Tucson Charter provides that the Mayor and Council have the power to “make all regulations which may be necessary or expedient for the preservation of the health and the suppression of disease; to make regulations to prevent the introduction of contagious, infectious, or other diseases into the city; to make quarantine laws and regulations and to enforce the same within the city; to regulate, control and prevent the entry within the city of persons, baggage, merchandise or other property infected with contagious disease;” and

WHEREAS, at the time of the consideration and adoption of this Ordinance, all of the following are true:

- 1) The State of Arizona is under a continuing Declaration of Public Health Emergency, as ordered by Governor Douglas A. Ducey, due to the necessity to prepare for, prevent, respond to, and mitigate the spread of COVID-19;

- 2) The City of Tucson is under a continuing Declaration of Emergency or Local and/or Civil Emergency, as proclaimed by Mayor Regina Romero and as supported by motions adopted by unanimous votes of the Mayor and Council on March 24, April 21 and June 9, 2020, and declared again by Ordinance adopted June 19, 2020, due to the COVID-19 pandemic;
- 3) the most current local data relating to COVID-19 as provided by the Arizona Department of Health Services (ADHS) and Pima County Health Department (PCHD) show that Pima County and the City of Tucson are experiencing significant community-based transmission of COVID-19, and an increasing pace of viral spread. Current local conditions demonstrate that cases of and hospitalizations for COVID-19 are increasing in Pima County; that the rate of positive test results is increasing; and that hospital capacity, and ICU bed capacity in particular, within Tucson, Pima County and Southern Arizona is at or very near full capacity.
- 4) The Centers for Disease Control and Prevention (CDC) recognizes the critical role that face coverings have in containing and mitigating the spread of COVID-19, and recommends that all persons wear cloth face coverings in public settings where other social distancing measures are difficult to maintain especially in areas of significant community-based transmission.
- 5) On June 14, hundreds of members of Arizona's medical community signed onto an open letter to Governor Ducey, imploring him to mandate the wearing of face coverings in public by all persons, citing the recent spike in COVID-19 cases and record numbers of hospitalizations.

- 6) On June 17, 2020, Governor Ducey issued his Executive Order No. 2020-40, “Containing the Spread of COVID-19; Continuing Arizona Mitigation Efforts,” in which he ordered that “a county, city or town may, based on conditions in its jurisdiction, adopt policies regarding the wearing of face coverings in public for the purpose of mitigating the spread of COVID-19.” Executive Order No. 2020-40 further provides that enforcement of any such local policy shall focus first on educating and working to promote the mitigation of the spread of COVID-19; and that a person shall be notified of the provisions of the local requirements and given an opportunity to comply prior to citation or other enforcement action.
- 7) On June 19, 2020, the Pima County Board of Supervisors adopted by Resolution various regulations requiring that all persons 5 years of age or older wear face coverings when they are in public places and cannot maintain a continuous physical distance of at least six (6) feet from other persons; but precluded any penalty, including any civil penalty, for violations unless first approved by the Board of Supervisors.
- 8) On June 19, 2020, immediately after the Board’s approval of the county-wide regulations, the Mayor and Council endorsed the provisions of the Pima County Resolution as adopted, including its specific requirements and exceptions, and supported the implementation and enforcement of these requirements within the incorporated areas of the City of Tucson, except as follows:

- The Mayor and Council reserved their legislative and regulatory authority as provided under the Tucson Charter and Arizona law to make and adopt all regulations that may be necessary or expedient for the preservation of health and suppression of infectious disease within the City, and reserved their authority to adopt additional regulations beyond those included in Pima County's Resolution, including a penalty provision providing for civil penalties for violations.

The Mayor and Council also provided direction to the City Attorney to prepare an ordinance to adopt face covering regulations equivalent to those adopted by Pima County, but with a penalty provision defining a violation as a civil infraction with a civil penalty of up to \$50 (or 5 hours of community service).

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF TUCSON, ARIZONA AS FOLLOWS:

SECTION 1. The Mayor and Council find and reaffirm that the COVID-19 outbreak constitutes a continuing emergency, local emergency and civil emergency that endangers life within the City of Tucson, and requires extraordinary measures to protect public health and safety, all as provided under the Tucson Charter, Arizona Revised Statutes and Tucson Code.

SECTION 2. The following regulations are hereby adopted, effective immediately:

Section 1. *Face coverings required.* Every person must wear a face covering that completely and snugly cover the person's nose and mouth when the person is in a

public place and cannot easily maintain a continuous distance of at least six (6) feet from all other persons. For the purposes of this Ordinance:

- a. "Face Covering" does not include any mask that incorporates a one-way valve (typically a raised plastic cylinder about the size of a quarter on the front or side of the mask) that is designed to facilitate easy exhaling.
- b. "Public place" means any place, indoor or outdoor, that is open to the public and includes, but is not limited to, businesses or other establishments where people assemble or members of the general public may enter; offices, public buildings, highways, and parks; and public transportation, including taxicabs and ride sharing.

Section 2. Exempt persons. **Section 1** above does not apply to:

- a. Children under the age of 5. Parents or guardians are responsible for ensuring that children under between the ages of 5 and 17 wear appropriate face coverings when required under this Resolution.
- b. Persons who cannot medically tolerate wearing a face covering. A person is not required to provide documentation demonstrating that the person cannot medically tolerate wearing a face covering.
- c. Persons who are hearing impaired, or communicating with a person who is hearing impaired, where the ability to see the mouth is essential for communication.
- d. Persons, including on-duty law-enforcement officers, for whom wearing a face covering would create a risk to the person related to their work, as determined by local, state, or federal regulators or workplace safety guidelines.

- e. Persons who are obtaining a service involving the nose, face, or head for which temporary removal of the face covering is necessary to perform the service.
- f. Persons who are eating or drinking at a restaurant or other establishment that offers food or beverage service, so long as the person is able to maintain a distance of 6 feet away from persons who are not members of the same household or party as the person.
- g. Any member of a group of persons who are in a public place together and live in the same household or are part of a party of 10 or less, so long as the group can easily maintain a continuous physical distance of at least 6 feet from all other persons not part of the household or party.
- h. Persons who are engaged in outdoor work, recreation, or exercise, when alone or as part of a group of people who live in the same household or constitute a party of 10 or less, so long as they are able to easily maintain a continuous physical distance of at least 6 feet from all other persons not part of the same household or party.
- i. Persons who are incarcerated.
- j. Persons who are swimming.
- k. Persons or activities that are granted an exemption, on a case-by-case basis, from the Pima County Chief Medical Officer and the Director of the Pima County Health Department.

Section 3. *Establishments.* Establishments that are open to the public must provide face coverings to their employees and require them to wear them. Additionally, establishments that are open to the public and in which continuous physical distancing of at least six feet between persons cannot be easily maintained may refuse to allow a

person who is not exempt under **Section 2** and who is not wearing a face covering to enter the establishment and may request that a person inside the establishment leave if the person is not exempt under **Section 2** and is not wearing a face covering.

Section 4. *Pima County investigations and enforcement.* Pima County will investigate and enforce the provisions of its June 19, 2020 Resolution as provided in Sections 4 and 5 of that Resolution. Nothing in this Ordinance excuses or exempts any person from compliance with the Pima County Resolution and the regulations therein; and nothing in this Ordinance affects in any way the enforcement of Pima County's Resolution by Pima County.

Section 5. *Enforcement and penalties.*

- a. *Enforcement.* Enforcement of this Ordinance and the regulations herein by any City enforcement agent shall focus first on educating and working to promote the mitigation of the spread of COVID-19. A person shall be notified of the provisions of this Ordinance and given an opportunity to comply prior to citation or other enforcement action.
- b. *Penalties.* Any violation of the provisions of this Ordinance relating to wearing of face coverings in a public place, as provided above, constitutes a civil infraction, and shall be punished by the imposition of a civil penalty of an amount not exceeding fifty dollars (\$50) or 5 hours of community service.

SECTION 3. The various City officers and employees are hereby authorized and directed to perform all acts necessary or desirable to give effect to this Ordinance.

SECTION 4. Whereas, it is necessary for the preservation of the peace, health and safety of the City of Tucson that this Ordinance become immediately effective, an emergency is hereby declared to exist and Ordinance shall be effective immediately upon its passage and adoption.

SECTION 5. The provisions of Section 2 of this Ordinance shall remain in effect until such time as the continuing emergency, local emergency and/or civil emergency are declared at an end, or until this Ordinance is modified, amended or repealed, whichever first occurs.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Tucson, Arizona, June 30, 2020.



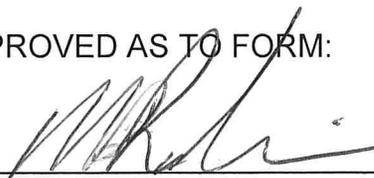
MAYOR

ATTEST:



CITY CLERK

APPROVED AS TO FORM:



CITY ATTORNEY

REVIEWED BY:



CITY MANAGER

MR/dg
6/17/20