

EMERGENCY ORDINANCE NO. 21-01

An Emergency Ordinance of the City Council of the City of Whitefish, Montana, to ensure the continuity of COVID-19 precautions for the health and safety of the City's citizens and visitors by requiring the use of face coverings in certain settings and waiving a second reading.

WHEREAS, coronaviruses are a large family of virus that cause illness ranging from the common cold to more serious issues, including death; and

WHEREAS, in late 2019, an outbreak of a new strain of coronavirus began in Wuhan, China; and

WHEREAS, on February 11, 2020, the World Health Organization named the new strain of coronavirus causing illness in China "COVID-19;" and

WHEREAS, according to the Center for Disease Control: "COVID-19 is thought to spread mainly through close contact from person-to-person in respiratory droplets from someone who is infected. People who are infected often have symptoms of illness. Some people without symptoms may be able to spread the virus."; and

WHEREAS, the Center for Disease Control has warned: "The virus that causes COVID-19 is spreading very easily and sustainably between people."; and

WHEREAS, on March 11, 2020, the World Health Organization declared a global pandemic due to the spread of COVID-19; and

WHEREAS, President Donald Trump, Governor Steve Bullock, the Flathead County Board of Commissioners, and Mayor John Muhlfeld have all declared states of emergency related to COVID-19; and

WHEREAS, on March 27, 2020, Governor Bullock issued a "stay at home" Directive; and

WHEREAS, on March 30, 2020, Governor Bullock issued a Directive requiring that individuals traveling to Montana from another state or country self-quarantine for 14 days; and

WHEREAS, on or about April 3, 2020, the Center for Disease Control recommended that individuals wear masks or cloth face coverings in public settings especially when other social distancing measures are difficult to maintain to prevent the spread of COVID-19; and

WHEREAS, on April 22, 2020, Governor Bullock issued a Directive for "Reopening the Big Sky" that provided for a phased re-opening of Montana and addressed the guidelines for Phase One; and

WHEREAS, Governor Bullock's May 19, 2020 Directive also lifted the 14-day quarantine requirement for travelers from other states and countries effective June 1, 2020; and

WHEREAS, on or about June 5, 2020, the World Health Organization advised governments to encourage the public to wear masks or cloth face coverings to help prevent the spread of COVID-19; and

WHEREAS, after Governor Bullock lifted the 14-day quarantine requirement for visitors from other states and countries, the State, County, and City experienced a significant influx of visitors, many of whom traveled from areas with a high rate of COVID-19 infection; and

WHEREAS, on July 15, 2020, Governor Bullock issued a Directive requiring the mandatory use of face coverings in certain settings for counties with four or more active COVID-19 cases; and

WHEREAS, since the State's reopening, Flathead County has experienced a significant and alarming increase in COVID-19 cases; and

WHEREAS, on November 17, 2020, Governor Steve Bullock issued a directive requiring that face coverings be worn in indoor spaces open to the public in all counties regardless of the number of active cases; and

WHEREAS, as of December 30, 2020, the Flathead City-County Health Department has reported 8,831 total cases of COVID-19, 16 active hospitalizations, and 56 deaths; and

WHEREAS, the rapid and significant spread of COVID-19 in our community is placing unprecedented pressure upon the health care system, public health staff, City and County resources, and schools; and

WHEREAS, incoming Governor Greg Gianforte has indicated that he may lift Governor Bullock's Directives requiring that face coverings be worn after he is sworn into office; and

WHEREAS, the overwhelming consensus of current medical and scientific evidence indicates that wearing face coverings reduces the transmissibility of COVID-19 by reducing transmission of infected droplets in both laboratory and clinical contexts; and

WHEREAS, the City remains committed to following the direction of our health and scientific leaders to protect our citizens, visitors, and our most vulnerable population; and

WHEREAS, the City remains committed to ensuring that our health care system is not over-burdened, our health care workers are safe, and our schools remain open; and

WHEREAS, as a municipal corporation with its own governmental charter, the City is a self-governing unit that may exercise any power not prohibited by the Montana Constitution, state law or its own charter; and

WHEREAS, the City's power and authority are liberally construed, with every reasonable doubt as to the existence of a power or authority resolved in favor of the power or authority's existence; and

WHEREAS, the City possesses an inherent power to enact reasonable legislation for the health, safety, welfare, or morals of the public; and

WHEREAS, § 7-5-104, MCA, authorizes the City Council to waive the second reading of an ordinance passed in response to an emergency and provides such ordinance is effective upon passage; and

WHEREAS, an emergency ordinance requires a two-thirds vote of the whole City Council for passage and remains effective for no more than 90 days; and

WHEREAS, §§ 2-3-103 through 2-3-111, MCA, provide that public agencies must ensure that prior to a final agency decision being taken that is of significant interest to the public, adequate notice is given, and the public is allowed a reasonable opportunity to participate; and

WHEREAS, § 2-3-112, MCA, provides §§ 2-3-103 through 2-3-111, MCA, do not apply to an agency decision that must be made to address an emergency situation affecting the public health, welfare, or safety; and

WHEREAS, COVID-19 constitutes an emergency situation affecting the public health, safety and general welfare and requiring the use of face coverings in public settings in accordance with scientific guidance will help ensure the health and safety of the City's residents and visitors, will reduce the likelihood that our health care system is over-burdened, and will help keep our schools open.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Whitefish, Montana, and its inhabitants, as follows:

Section 1: All the recitals set forth above are hereby adopted as Findings of Fact.

Section 2:

1. Definitions.

a. "Business" means any for-profit or non-profit entity which has employees or volunteers. The term "business" includes, but is not limited to, retail stores, grocery stores, food and beverage establishments, public lodging, personal care providers, medical providers, pharmacies, gyms, pools, fitness services, museums and theaters, indoor recreational or entertainment facilities, gas stations, repair and service providers, non-profit organizations, realty services, legal services, transportation services, and ride sharing services.

b. "Face Covering" means a fabric, paper, or disposable face covering that covers the nose and mouth and which does not have an exhalation valve. The term "face covering" includes face shields.

c. "Government office" means any office of any department, agency, or political subdivision of the State of Montana.

d. "Indoor space open to the public" means any indoor space, whether publicly or privately owned, where the public has access by right or invitation, express or implied, whether by payment of money or not. In addition, "indoor spaces open to the public" include, but are not limited to, lobbies, common areas, elevators, bathrooms, meeting rooms, or other spaces where people gather. The term includes all modes of public or commercial transportation. The term does not include private residences not open to the public.

e. "Organized outdoor activity" means any gathering of 25 or more people for an activity or event organized or sponsored by a business or person, or that takes place on the property of a business or person. This includes, but is not limited to, outdoor theatrical or music performances, fairs, markets, festivals, parades, carnivals, rodeos, sporting or athletic events, beer gardens, weddings and receptions, or parties.

f. "Sponsor" means any business or person who organizes or sponsors an organized outdoor activity, or who allows the activity to take place on their property.

2. Face Covering Requirement in Indoor Spaces Open to the Public.

a. Except as provided in section 4, all businesses, government offices, or other persons responsible for indoor spaces open to the public shall require and take reasonable measures to ensure that all employees, contractors, volunteers, customers, or other members of the public wear a face covering that covers their mouth and nose at all times while entering or remaining in any indoor spaces open to the public.

b. Face coverings shall be provided for all employees and volunteers.

c. All points of entry open to the public shall have a clearly visible sign posted stating: "Mask or face covering use required for ages five and older."

3. Face Covering Requirements for Certain Organized Outdoor Activities.

a. Except as provided in section 4, for any organized outdoor activity where social distancing is not possible or is not observed, sponsors shall require and take reasonable measures to ensure that all persons attending an organized outdoor activity wear a face covering that covers their mouth and nose at all times.

b. At all outdoor gatherings, whether or not it constitutes an organized outdoor activity, all individuals except those covered by section 4 of this Directive are required to wear face coverings while in attendance where it is impracticable to

maintain six feet of physical distance at all times, or where attendees are not observing at least six feet of physical distance from others.

4. Exceptions.

a. Businesses, government offices, other persons responsible for indoor spaces open to the public, and sponsors of organized outdoor activities are not required to ensure the following individuals wear face coverings:

i. Children under the age of five. All children between the ages of two and four, however, are strongly encouraged to wear a face covering in accordance with the provisions of this emergency ordinance. Children under the age of two should not wear a face covering.

ii. Persons consuming food or drinks in an establishment that offers food or drinks for sale while seated.

iii. Persons engaged in an activity that makes wearing a face covering impractical or unsafe, such as strenuous physical exercise or swimming.

iv. Persons seeking to communicate with someone who is hearing impaired.

v. Persons giving a speech or engaging in an artistic, cultural, musical, or theatrical performance for an audience, provided the audience is separated by at least six feet of distance.

vi. Persons temporarily removing their face covering for identification purposes.

vii. Persons required to remove face coverings for the purpose of receiving medical evaluation, diagnosis, or treatment.

viii. Persons who have a medical condition precluding the safe wearing of a face covering.

b. Businesses, government offices, persons responsible for indoor spaces open to the public, and sponsors of organized outdoor activities should afford accommodations from the provisions of this emergency ordinance to those who are entitled an accommodation under federal and state disability protection laws, including the Americans with Disabilities Act (ADA) and the Montana Human Rights Act, labor laws, or any other applicable law requiring accommodations in public accommodations.

c. Only those employees, volunteers, and contractors in public-facing workspaces or when social distancing is impossible to maintain with others are required to wear face coverings as specified in this emergency ordinance.

5. Penalties.
 - a. Violation of this emergency ordinance is deemed a municipal infraction and will be subject to the penalties set forth in section 1-4-4 of the City Code.
 - b. Violation of this emergency ordinance by a Business may result in the suspension or revocation of any business license issued for the premises on which the violations occurred.
 - c. Violation of this emergency ordinance by a Business may result in the City reporting such violation to the Department of Revenue Liquor Control Division.
 - d. Violation of this emergency ordinance is hereby declared to be a public nuisance which may be abated by the City by restraining order, preliminary or permanent injunction, or other means provided by law and the City may take action to recover the costs of the nuisance abatement.
 - e. Each day of continuing violation of this emergency ordinance may be considered a separate and distinct offense.
6. Effective Dates. This emergency ordinance shall take effect immediately upon repeal, dismissal, vacation, or discontinuation of Governor Bullock's Directives requiring the use of face coverings. This emergency ordinance shall terminate upon repeal by the City Council or upon 90 days from its effective date.
8. Severability. Should any word, provision, section, paragraph, or sentence of this emergency ordinance be rendered or declared invalid by a court of competent jurisdiction or by reason of preemptive legislation, the remaining words, provisions, sections, paragraphs, and sentences of this emergency ordinance as adopted shall remain in full force and effect.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, THIS 4TH DAY OF JANUARY 2021.

/s/John Muhlfeld
John M. Muhlfeld, Mayor

ATTEST:

/s/Michelle Howke
Michelle Howke, City Clerk