

TOWN OF KIAWAH ISLAND

ORDINANCE 2021-03

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF KIAWAH ISLAND REGARDING FACE COVERINGS, RESTRICTIONS ON RESTAURANTS, ESTABLISHMENTS THAT POSSESS A STATE PERMIT TO SELL ALCOHOL, OTHER BUSINESSES AND FACILITIES, AND ESSENTIAL BUSINESSES

The Town Council of the Town of Kiawah Island, South Carolina, duly assembled, hereby ordains that the following Ordinance be adopted:

WHEREAS, it is well recognized that SARS-CoV-2, the virus that causes the disease COVID-19, presents a public health concern that requires extraordinary protective measures and vigilance; and

WHEREAS, on March 11, 2020, the World Health Organization (WHO) declared COVID-19 a pandemic; and

WHEREAS, on March 13, 2020, the President of the United States has declared a National Emergency for the United States and its territories in an effort to reduce the spread of the virus, and that State of Emergency remains in place; and

WHEREAS, the Governor of South Carolina declared a State of Emergency on March 13, 2020, to enhance the State's response to the COVID-19 virus's impact on the State, and that State of Emergency remains in place; and

WHEREAS, the Mayor of the Town of Kiawah Island declared a State of Emergency within the Town on March 19, 2020, and his proclamation was adopted by Town Council on March 25, 2020, and that State of Emergency remains in place; and

WHEREAS, Town Council adopted several versions of a prior Emergency Ordinance in the past three months, but have since lifted most restrictions, although some restrictions on citizens, visitors, and businesses remain in place; and

WHEREAS, since the lifting of restrictions, the State, County, and Town has seen a resurgence in the spread of COVID-19; and

WHEREAS, citizens and visitors, particularly those visiting commercial businesses within the Town have had a low rate of mask usage and have infrequently engaged in voluntary social distancing and other actions designed to impede the social transmission of the virus; and

WHEREAS, the CDC and SCDHEC have repeatedly advised the use of cloth face coverings to slow the spread of COVID-19; and

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

WHEREAS, taking measures to control outbreaks minimizes the risk to the public, maintains, the health and safety of the Town's residents and visitors, and limits the spread of infection in our communities and within the healthcare delivery system; and

WHEREAS, Section 5-7-30 (the “Home Rule Statute, as well as the Governor’s Executive Orders, empower Council to enact ordinances affecting life, health, or safety and responding to the pandemic; and

WHEREAS, the South Carolina Attorney General on June 24, 2020 has issued an opinion that municipalities are authorized to issue ordinances requiring the public use of masks; and

WHEREAS, on November 25, 2020, the Governor issued Executive Order No. 2020-73 rescinding all prior Executive Orders, other than those declaring a State of Emergency, and declared that voluntary guidelines governing restaurants first established by AccelerateSC were now mandatory. These now mandatory restrictions govern restaurants, other establishments that possess a state permit to sell alcohol, and other businesses, facilities, venues, events, or mass gatherings. Among other things, restaurants must require the wearing of masks, cannot sell alcohol after 11:00 p.m., and must space tables six (6) feet apart. Although Executive Order No. 2020-73 does not include an occupancy restriction on restaurants, it does explicitly permit municipalities to enact their own emergency ordinances, orders, or other measures applicable to restaurants. See Section 3(F). Thus, the Town has determined that the 50% restriction on restaurant occupancy should remain; and

WHEREAS, the Governor’s Executive Order No. 2020-73 also explicitly authorized municipalities to enact their own emergency ordinances, orders, or other measures requiring the use of masks in public settings where it is not feasible to maintain six (6) feet of separation from others; and

WHEREAS, the Governor’s most recent Executive Order No. 2021-07 has once again extended the State of Emergency and the outstanding Executive Orders addressing the pandemic, and it appears likely that he shall continue to issue such extensions for the foreseeable future; and

WHEREAS, in light of the foregoing, Town Council of the Town of Kiawah Island deems it proper and necessary to adopt a permanent ordinance setting in place restrictions related to the pandemic for a longer period of time, as opposed to an emergency ordinance adopted pursuant to South Carolina Code § 5-7-250;

NOW, THEREFORE, BE IT, AND IT HEREBY IS, RESOLVED BY THE TOWN COUNCIL FOR THE TOWN OF KIAWAH ISLAND, SOUTH CAROLINA, AS FOLLOWS:

1. The directives and procedures adopted by the Town’s prior Emergency Ordinances are hereby rescinded and replaced by this Emergency Ordinance **except** the following:
 - A. The most recently adopted Emergency Ordinance No. 2021-02, which shall remain in place until the second reading and final adoption of this Ordinance;
 - B. The Mayor’s Proclamation of Emergency, dated March 19, 2020, and Council’s confirmation of same remain in place;
 - C. Town Council members and staff will be authorized during this State of Emergency to attend meetings of Council via teleconference at their discretion;
 - D. The public will not be allowed to attend Council meetings, or any other Town meetings, in person. Meetings will still be broadcast. Measures will be taken to allow the public to submit comments prior to any meeting by emails, which will be included in the public record of the meeting.
 - E. The Town Administrator is authorized to cancel and revoke any special events permits issued prior to the date of this ordinance; and
 - F. The Mayor is authorized to take protective measures for protection of the public health.

MASK REQUIREMENT

2. “Face Covering” or “mask” shall mean a covering of the nose and mouth that is secured to the head with ties, straps, or loops over the ears or is otherwise wrapped around the lower face. A

Face Covering can be made of natural or synthetic fabrics and can be handmade or improvised from other items. A face shield that covers the nose and mouth and extends below the chin shall satisfy the Face Covering requirements of this Order. Medical-grade masks or respirators shall satisfy the Face Covering requirements of this Order; however, according to the latest CDC guidance, these critical supplies should be reserved for use by healthcare workers and medical first responders.

3. All persons, including employees, entering or waiting to enter any restaurant (including persons waiting to pick up a carryout order), business, club, or association facility must wear a face covering at all times.
4. The following persons are exempted from the Face Covering requirement:
 - A. A child who is two (2) years old or younger or a child whose parent, guardian, or responsible adult has been unable to place the Face Covering safely on the child's face.
 - B. A person who is seeking to communicate with someone who is hearing-impaired in a manner that requires the mouth to be visible.
 - C. A person with a physical, mental, or behavioral health condition or disability (including, but not limited to, any person who has trouble breathing, or is unconscious or incapacitated, or is otherwise unable to put on or remove a Face Covering without assistance) that prevents wearing a Face Covering, provided that a non-employee or visitor who represents that they cannot wear a Face Covering for one or more of these reasons should not be required to produce documentation or any other form of proof of such a condition.
 - D. A person who is actively engaged in eating or drinking or obtaining a service that requires access to or visibility of the face.
 - E. A person who is engaging in strenuous exercise or physical activity.
 - F. A person who is operating or occupying a vehicle alone or with other persons who are members of the same household.
 - G. A person who is voting or assisting with the administration of an election, although wearing a Face Covering is strongly encouraged.
 - H. A person who must remove a Face Covering for purposes of identification or security screening or surveillance.
 - I. A person for whom wearing a Face Covering would create a risk to the health or safety of the person due to their occupation, job function, or work assignment where wearing a Face Covering would be inconsistent with industry safety standards or protocols or federal, state, or local regulations or guidelines.
5. Businesses and restaurants are responsible for enforcing this Emergency Ordinance with regard only to their employees and are subject to the penalties included herein for violations occurring inside or outside of their business by their employees. Businesses and restaurants are required to conspicuously post at each entry and exit a notice in their business visible to customers entering the business, informing customers that the use of Face Coverings by customers and employees is mandated by law. Failure to post such a notice is a violation of this Emergency Ordinance.

ADDITIONAL EMERGENCY RESTRICTIONS

6. The Town adopts all Emergency Orders as amended issued by the State of South Carolina Governor Henry McMaster related to the coronavirus, including Governor McMaster's Executive Order No. 2020-73.

7. All restaurants and other establishments that possess a state permit to sell alcohol must comply with the Governor's Executive Order No. 2020-73 and shall comply with the following mandatory restrictions:
 - A. The sale or consumption of beer, wine, or alcoholic liquor in all restaurants and other establishments that possess a state permit to sell alcohol is prohibited between the hours of 11:00 PM and 10:00 AM. The sale of beer, wine, or alcoholic liquors for off-premises consumption is not covered by this restriction;
 - B. Employees and patrons shall be required to wear masks or face coverings;

In addition, pursuant to the authority granted by the Governor's Executive Order No. 2020-73, Section 3(F), the Town also requires that restaurants comply with the following mandatory restrictions:

- A. Diners must be seated six (6) feet away from diners at other tables;
 - B. Restaurants must seat no more than 8 customers per table unless from the same family; and
 - C. Restaurants must not allow standing or congregating in the bar area of restaurant.
8. Per the Governor's Executive Order, other types of businesses, facilities, venues, events or mass gatherings which are permitted to open but are required to implement AccelerateSC guidelines include the following: festivals, parades, concerts, theaters, stadiums, arenas, coliseums, auditoriums, grandstands, amphitheaters, gymnasiums, concert halls, dance, halls, performing arts centers, parks, racetracks, or similarly operated entities. These guidelines include, but are not limited to, the following:
 - A. Attendance may not exceed 50% of the certificate of occupancy issued by the fire marshal – or 250 persons – whichever is less;
 - B. Require the wearing of masks for face coverings as a condition of admission or participation;
 - C. Enact social distancing, cleaning and hygiene practices as recommended by AccelerateSC; and
 - D. End the sale of alcohol at 11:00 PM.
9. All essential businesses originally covered by the Governor's Executive Order No. 2020-21, Section 1(I) must comply with occupancy rate, social distancing practices, and sanitations requirements included in the Governor's Executive Order No. 2020-21, Section 1(I), which includes the following restrictions:
 - A. Emergency Maximum Occupancy Rate. The business shall limit the number of customers allowed to enter and simultaneously occupy the premises so as not to exceed five (5) customers per 1,000 square feet of retail space, or twenty percent (20%) of the occupancy limit as determined by the fire marshal, whichever is less.
 - B. Social Distancing Practices. The business shall not knowingly allow customers, patrons, or other guests to congregate within six (6) feet of one another, exclusive of family units.
 - C. Sanitation. The business shall implement all reasonable steps to comply with any applicable sanitation guidelines promulgated by the CDC, DHEC, or any other state or federal public health officials.
10. Violators of any other provision contained in this Ordinance will be subject to a criminal fine of up to \$100.00 plus required statutory assessments. Each day of the infraction shall be considered a separate offense. In addition, any violation may be charged as a criminal infraction

with any other relevant criminal penalties contained in the Kiawah Island Municipal Code, or civil or criminal penalties under state law, or federal law, including violations of S.C. Code Section 16-7-10 (Illegal acts during state of emergency), and penalties authorized pursuant to Executive Orders issued by the South Carolina Governor. In addition, the Governor has authorized cities to seek an injunction, mandamus, or other appropriate legal action in the courts of the State.

11. All net fines (not including assessments or other payments directed elsewhere under State law) paid to the Town for violations of this Ordinance will be earmarked and donated to a nonprofit or charitable organization to be chosen at a later date.
12. Should any provision, section, paragraph, sentence or word of this Ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences, or words of this Emergency Ordinance as hereby adopted shall remain in full force and effect.
13. This Ordinance is adopted through normal procedures, including adoption by way of two readings, as opposed to adoption by S.C. Code § 5-7-250(d), which requires only one reading, but cannot be implemented for more than 61 days at a time. This Ordinance shall remain in place until December 31, 2021 or until the Governor allows the current State of Emergency to expire, whichever date comes first.

MOVED, APPROVED AND ADOPTED THIS 3rd DAY OF MARCH, 2021.

John D. Labriola, Mayor

ATTEST:

By: _____
Petra Reynolds, Town Clerk

1st Reading: February 2, 2021

2ND Reading: March 3, 2021