

ORDINANCE NO:2020-29

AN ORDINANCE TO REQUIRE FACE COVERINGS IN CERTAIN CIRCUMSTANCES; TO REAUTHORIZE AND AMEND THE AUTHORIZATION FOR ELECTRONIC MEETINGS; AND OTHER MATTERS RELATED THERETO

WHEREAS, the 2019 Novel Coronavirus ("COVID-19") is a respiratory disease that can result in serious illness or death by the SARS-CoV-2 virus, which is a new strain of coronavirus previously unidentified in humans and which can spread from person to person; and

WHEREAS, the Centers for Disease Control and Prevention (the "CDC") has warned of the high public health threat posed by COVID-19 globally and in the United States; and

WHEREAS, on January 31, 2020, the United States Department of Health and Human Services Secretary declared a public health emergency in the United States for COVID-19 under Section 391 of the Public Health Service Act; and

WHEREAS, on March 13, 2020, the President of the United States declared that the COVID-19 outbreak in the United States constitutes a national emergency; and

WHEREAS, on March 13, 2020, the Governor of the State of South Carolina (the "State") issued Executive Order 2020-08, declaring a State of Emergency based on a determination that COVID-19 poses an actual or imminent public health emergency for the State; and

WHEREAS, the Governor of the State has subsequently declared a continued State of Emergency in Executive Orders 2020-15 (March 28), 2020-23 (April 12), 2020-29 (April 27), 2020-35 (May 12), 2020-38 (May 27), 2020-40 (June 11); 2020-42 (June 26); 2020-44 (July 11); 2020-48 (July 26); 2020-50 (August 2); 2020-53 (August 10); 2020-56 (August 25); 2020-59 (September 9); 2020-62 (September 24); 2020-63 (October 2); 2020-65 (October 9); 2020-67 (October 24); 2020-70 (November 8); 2020-72 (November 23); and

WHEREAS, Easley is experiencing an increase in the number of identified new COVID-19 cases, and as of November 29, 2020, the South Carolina Department of Health and Environmental Control ("DHEC") is reporting that there have been 202,422 confirmed and 13,707 probable cases COVID-19 cases, and 4050 confirmed and 303 probable COVID-19 deaths in the State; and

WHEREAS, Pickens County is experiencing an increase in the number of identified new COVID-19 cases, and as of November 17, 2020, the South Carolina Department of Health and Environmental Control ("DHEC") is reporting that there have been 6,237 confirmed and 303 probable COVID-19 cases in Pickens County with 994 cases (15.2% of all cases) in the past 2 weeks; and

WHEREAS, the City Council finds it vitally important that individuals work together to decrease the widespread proliferation of COVID-19 among citizens of the City; and

WHEREAS, a South Carolina DHEC analysis of the local mask ordinance shows that as of November, about two million South Carolinians live in cities or counties that have local mask mandates in place; and

WHEREAS, when analysts compared areas with mask requirements with those that don't have an

ordinance in the place, the jurisdictions with mask mandates have shown a 46.3% greater decrease in the total number of cases during the four weeks after the requirements were implemented; and

WHEREAS, the data also shows that counties and cities with mask requirements saw a 15.1% decrease in cases four weeks after the requirements after mask mandates were in place. It is an overall decrease of 34.6 cases per 100,000 people; and

WHEREAS, public health experts and officials have expressed concerns that the arrival of cooler weather will lead to more people staying indoors, where COVID-19 can spread more easily, and may increase community transmission of COVID-19; and

WHEREAS, particularly as public and private K-12 schools and higher education institutions in the County, regions, and throughout the State of South Carolina continue to reopen, in whole or in part, for in-person instruction, it is critically important that the City remain vigilant in addressing COVID-19 by maximizing interagency coordination to facilitate the safe resumption or continuation of classroom instruction while simultaneously implementing measures to minimize the risk of community spread and transmission of COVID-19 in schools and other settings; and

WHEREAS, in light of the foregoing, and due to the continued spread of COVID-19, the significant number of individuals hospitalized in connection with the same, and the anticipated increase in hospitalizations in connection with influenza, the State of South Carolina, and local communities must promptly take any and all necessary and appropriate steps to implement and expand certain mitigation efforts designed to reduce community transmission and to minimize the resulting strain on healthcare facilities and resources; and

WHEREAS, if COVID-19 cases continue to increase in the State, in Pickens County, and in the City of Easley, the demand for medical, pharmaceutical, personal, and general cleaning supplies may overwhelm sources of supply; the private and public sector workforce may be negatively impacted by absenteeism; and the demand for medical facilities may exceed available resources; and

WHEREAS, health authorities, including the CDC, the Surgeon General of the United States and DHEC have recommended the use of face coverings as a means of preventing the spread of COVID-19; and

WHEREAS, the Mayor and City Council of the City of Easley have determined, based on the recommendations of public health experts and responsive to a serious threat to the public health, safety, and welfare of its citizens, that it would serve the public interest and be within the City of Easley's police powers under Home Rule and S.C. Code § 5-7-60 to require that individuals wear face coverings in certain situations and locations; and

WHEREAS, the South Carolina Attorney General, on June 25, 2020, issued a public statement that enacting local mask requirements is within the police power of municipalities and is not preempted by State law and the Governor has encouraged municipalities to adopt mask requirements during numerous press conference related to COVID-19; and

WHEREAS, on April 13, 2020, the City Council of the City of Easley (the "**City Council**"), as the governing body of the City of Easley, South Carolina (the "**City**") enacted Emergency Ordinance No. 2020-11 (the "**Prior Emergency Ordinance**") to temporarily authorize electronic meetings and to suspend other local procedural rules; and

WHEREAS, as the number of COVID-19 cases continues to grow in the State (and specifically in

Upstate counties), the S.C. Dept. of Health and Environmental Control ("**DHEC**") continues to warn of the risk of localized person-to-person spread of COVID-19, creating an extreme public health risk; and

WHEREAS, if COVID-19 continues to spread in the City and surrounding areas at its current rate, the number of persons relying on medical, pharmaceutical, and general cleaning supplies will increase, absenteeism will negatively impact the private and public sector work force, and the demand for medical facilities may exceed locally available resources; and

WHEREAS, the Centers for Disease Control and Prevention and DHEC advise the use of face coverings to slow the spread of COVID-19; and

WHEREAS, the Constitution of the State of South Carolina 1895, as amended (the "**Constitution**"), provides "all laws concerning local government shall be liberally construed in their favor [and] [p]owers, duties and responsibilities granted local government subdivisions by this Constitution and by law shall include those fairly implied and not prohibited by this Constitution." See S.C. Const. Art. VIII, Sect. 17; and

WHEREAS, the City is expressly empowered pursuant to Section 5-7-30 of the South Carolina Code of Laws 1976, as amended, to "enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State, including the exercise of powers in relation to roads, streets, markets, law enforcement, health, and order in the municipality or respecting any subject which appears to it necessary and proper for the security, general welfare, and convenience of the municipality or for preserving health, peace, order, and good government in it ... "; and

WHEREAS, in construing Section 5-7-30, the South Carolina Supreme Court has previously held that "[m]unicipalities are granted broad police powers to enact ordinances with respect to any subject which appears necessary and proper for the security, general welfare and convenience of the municipality." *Peterson Outdoor Advert. v. City of Myrtle Beach*, 327 S.C. 230, 234, 489 S.E.2d 630, 632 (1997); see also *Town of Hilton Head Island v. Fine Liquors, Ltd.*, 302 S.C. 550, 553, 397 S.E.2d 662, 664 (1990); and

WHEREAS, in the absence of express preemption, "[w]here the General Assembly specifically recognizes a local government's authority to enact local laws in the same field, the statutory scheme does not evidence legislative intent to occupy the entire field of regulation." *Sandlands*, 394 S.C. at 466, 716 S.E.2d at 288 (2011); and

WHEREAS, in recent cases construing preemption in the State, the South Carolina Supreme Court has stated:

- (1) "An ordinance is preempted under implied field preemption when the state statutory scheme so thoroughly and pervasively covers the subject as to occupy the field or when the subject mandates statewide uniformity." *Aakjer v. City of Myrtle Beach*, 388 S.C. 129, 133, 694 S.E.2d 213, 215 (2010);
- (2) "To preempt an entire field, an act must make manifest a legislative intent that no other enactment may touch upon the subject in any way." S.C. *State Ports Auth. v. Jasper Cty.*, 368 S.C. 388, 395, 629 S.E.2d 624, 627 (2006);
- (3) When "the General Assembly specifically recognizes a local government's authority to enact local laws in the same field, the statutory scheme does not evidence legislative intent to occupy the entire field of regulation." *Sandlands C & D, LLC v. Cty. of Horry*, 394 S.C. 451, 466, 716 S.E.2d 280, 288 (2011); and

WHEREAS, in consideration of City's Home Rule powers, and the preemption cases recited above (which included a consideration of the provisions of Section 16-7-110 of the Code of Laws of South Carolina 1976, as amended), the South Carolina Attorney General, Alan Wilson, released a public statement on June 24, 2020 regarding the legality and validity of municipal ordinances requiring the wearing of masks wherein he publicly stated that "yes, a city can pass this type of ordinance"; and

WHEREAS, in light of the foregoing, to include the broad police powers of the City and the absence of State laws preempting the subject of this Ordinance, City Council finds it proper, necessary, and essential to enact this ordinance to require face coverings be worn by persons when interacting in public spaces in the City in order to meet the public health crisis facing the City; and

WHEREAS, it is hereby determined that the continuation and spread of COVID-19 represents a public emergency affecting life, health, and safety, and therefore, it is proper, necessary, and essential to enact this Ordinance.

NOW THEREFORE, be it hereby ordained in this meeting of the City Council, as follows:

Section 1. Recitals.

Each finding or statement of fact set forth in the recitals hereinabove has been carefully examined and has been found to be in all respects true and correct.

Section 2. Requirement of Face Coverings.

(a) Terms using initial capitals in this Section 2 shall have the following definitions:

1. "City" means the City of Easley, South Carolina.
2. "Face Covering" shall mean a cloth, fabric, textile, or impervious material without holes, that covers both the mouth and nose, including but not limited to surgical masks, respirators, face shields, handmade masks, bandanas, neck gaiters, scarves, or wraps.
3. "Household" means Persons living in the same dwelling unit. Household does not include residents of separate dwelling units at the same location, such as may be the case at a dormitory, apartment complex or other multi-family housing complex.
4. "Person" means any human being in the City. For purposes of this Section 2, Person does not include: (i) children younger than 6 years old; (ii) individuals with medical conditions, mental health conditions, or disabilities which prevent the wearing of a Face Covering; (iii) individuals who are hearing impaired, or who are communicating with an individual who is hearing impaired, where the ability to see mouth function is essential to communication; (iv) individuals, while working, for whom wearing a Face Covering would create a risk to such individual related to their work, as dictated by local, state or federal regulations or applicable workforce guidelines; and (v) individuals receiving or obtaining medical service or treatment involving the mouth or nose wherein temporary removal of a Face Covering is necessary to perform the service or treatment.

(b) The use of a Face Covering is required by every Person within the boundaries of the City as detailed

below. Every Person must wear Face Covering at all times when: (1) inside any building which is open to the public; (2) waiting to enter any building which open to the public; (3) engaging in business activities in public, commercial, or industrial spaces; (4) utilizing public or commercial transportation services.

(c) Face Coverings are not required when a Person is: (1) traveling in a private vehicle; alone in an enclosed space or able maintain a minimum distance of six feet from other Persons at all times; (3) outdoors and able to maintain a minimum distance of six feet from other Persons at all times; (4) alone or only with other Household members; (5) drinking, eating or smoking (where smoking is permitted); (6) inside a private residence, including curtilage thereof; or (7) complying with a request of law enforcement; (8) Two weeks after completing or having a CDC approved vaccination treatment.

Section 3. Reauthorization and Amendment of the Prior Emergency Ordinance.

The prior Emergency Ordinance expired after the sixty-first day after its enactment. The City Council hereby reauthorizes the provisions of the Prior Emergency Ordinance related to electronic meetings, hearings and other procedures until this Ordinance expires pursuant to Section 5 hereof. However, Section 3 of the Prior Emergency Ordinance is amended and restated in its entirety, as follows:

"Section 3.

A. Public Comment. With respect to any electronic meeting, any public comment periods provided for by local ordinance, resolution, policy, or bylaws are hereby suspended. However, members of the public may submit written public comments to the City Clerk no later than one hour prior to any regular meeting, which shall be distributed to the members of the Governing Body at such meeting, and the Mayor shall read such comments aloud during the public comment period. Should it be deemed necessary, the City Clerk may contact those who wish to comment during the meeting by phone to permit them to address the Governing Body at the appropriate time during the meeting. All public input shall otherwise be conducted in accordance with all other Rules and Procedures of the Governing Body.

B. Public Hearings. With respect to any public hearing that is required by law to be held in connection with any proposed action of the Governing Body, electronic public hearings shall be permitted. Members of the public wishing to provide written comments for any such public hearing may email comments to the City Clerk no later than one hour prior to the scheduled time for such public hearing, and the Mayor shall read such comments aloud during the public hearing. Should it be deemed necessary, the City Clerk may contact those who wish to comment during the meeting by phone to permit them to address the Governing Body at the appropriate time during the meeting. All public input shall otherwise be conducted in accordance with all other Rules and Procedures of the Governing Body. Notices of public hearings shall include detailed instructions regarding the manner in which the public hearing shall be held.

C. Suspension of Local Provisions. During the period of effectiveness of this Ordinance, any ordinance, resolution, policy, or bylaw of the Governing Body that conflicts with the provisions hereof is suspended and shall be superseded hereby."

Section 4. Effective Date; Expiration. This Ordinance shall take effect immediately upon passage of

the First reading but may be terminated by the issuance of a Resolution or shall automatically expire upon termination or expiration of the Emergency Declaration and Ordinance regarding COVID-19 or the Governor's Emergency Declaration, whichever date is earlier.

All ordinances in conflict with this ordinance are hereby repealed.

This ordinance shall be effective on the 11:59 pm on December 15, 2020.

INTRODUCED the 14th day of December 2020.

DONE the ____ day of December 2020.

MAYOR

Attest:

City Clerk