

EMERGENCY ORDER REQUIRING THAT FACE COVERINGS BE WORN WHILE IN A PUBLIC PLACE IN THE CITY OF ROME DURING THE COVID-19 PUBLIC HEALTH EMERGENCY TO PROMOTE HEALTH, SAFETY, AND WELFARE.

WHEREAS, Rome, Georgia has experienced an event of crucial significance resulting from the spread of Coronavirus (“COVID-19”) Disease from Wuhan, China; and

WHEREAS, the Centers for Disease Control and Prevention, (“CDC”) indicates that COVID-19 is a contagious respiratory disease caused by a novel coronavirus; and

WHEREAS, COVID-19 is considered a global pandemic by the World Health Organization; and

WHEREAS, COVID-19 can be transmitted from person to person through aerosolization and droplets stemming from both symptomatic and asymptomatic host persons; and

WHEREAS, COVID-19 has been shown to cause symptoms including minor illness, serious illness, organ damage, and death; and

WHEREAS, the CDC has classified individuals age 65 and older or persons living with certain medical conditions to be at an increased risk from illness or death resulting from COVID-19; and

WHEREAS, there is not a vaccine for COVID-19 available to the general public; and

WHEREAS, the CDC noted that COVID-19 spreads through droplets and aerosolization when a person infected with COVID-19 talks, coughs, or sneezes within six feet of other persons; and

WHEREAS, on March 14, 2020 President Donald J. Trump declared a state of national emergency in response to the increasing rate of COVID-19; and

WHEREAS, on March 14, 2020 Governor Brian Kemp declared a Public Health State of Emergency in Georgia, which was renewed on April 8, 2020, April 30, 2020, May 28, 2020 and June 29, 2020, which will remain in effect through August 11, 2020; and

WHEREAS, on March 19, 2020 Floyd County, the City of Rome, and the City of Cave Spring declared a state of emergency and a public health emergency; and

WHEREAS, on March 24, 2020 the City of Rome adopted a Second Ordinance Declaring Local Emergency Related to COVID-19 and declared a shelter-in-place order; and

WHEREAS, Governor Brian Kemp, through Executive Orders 04.30.20.01, 05.12.20.02, 05.28.20.02, 06.11.20.01, 06.29.20.02, and 08.15.20.01 has supported the need for extra precautions to care for vulnerable populations who meet the criteria for increased risk of severe

illness as defined by the CDC and identified in Section III of the Governor's Executive Order 06.29.20.02; and

WHEREAS, Executive Orders 04.30.20.01, 05.12.20.02, 05.28.20.02, 06.11.20.01, 06.29.20.02, and 08.15.20.01 require vulnerable persons to shelter in place except for participating in essential services and working effective through August 31, 2020; and

WHEREAS, the CDC, Dr. Kathleen Toomey (Georgia Commissioner of Public Health), and Governor Brian Kemp through Executive Order 05.12.20.02 and 08.15.20.01 have recommended that individuals wear face coverings that encompass the nose and mouth in an effort to combat the further spread of COVID-19 from symptomatic and asymptomatic persons while in public places and when social distancing is not an option; and

WHEREAS the CDC recognizes that wearing a face covering over the nose and mouth is a precaution that is designed to limit the spread of COVID-19 among persons; and

WHEREAS, Dr. Kathleen Toomey and Governor Brian Kemp have modeled this behavior of mask wearing for Georgians to follow in an effort to reduce the spread of COVID-19; and

WHEREAS, a significant number of Georgia residents are at risk of serious health complications, including death, from COVID-19;

WHEREAS, a large number of persons with serious infections can compromise the ability of the healthcare system to deliver necessary care to the public;

WHEREAS, individuals diagnosed with COVID-19 have been known to experience long-term health effects following recovery from acute COVID-19 symptoms;

WHEREAS, COVID-19 is a respiratory illness, transmitted through person-to-person contact or by contact with surfaces contaminated with the virus and persons infected with COVID-19 may become symptomatic two to fourteen days after exposure;

WHEREAS, asymptomatic (including presymptomatic) infected persons are known to be infectious and, without mitigation many infections occur from individuals without symptoms;

WHEREAS, respiratory droplets, including aerosols, from infected persons are a major mode of COVID-19 transmission. This understanding is the basis of the recommendations for physical distancing, and of the personal protective equipment guidance for healthcare workers. Droplets do not only come from coughing or sneezing; droplets are also generated via talking and breathing;

WHEREAS, evidence indicates that the use of face coverings reduces the transmissibility per contact by reducing transmission of infected droplets in both laboratory and clinical contexts. Public face covering wearing is most effective at stopping the spread of the virus when compliance is high. This evidence supports the conclusion that the adoption

of more widespread face covering requirements can help to control the COVID-19 epidemic by reducing the shedding of droplets into the environment from asymptomatic and symptomatic individuals;

WHEREAS, evidence from the South Carolina Department of Health and Environmental Control announced on August 12, 2020, that parts of the State of South Carolina under public mask-wearing mandates registered a 46.3% drop in coronavirus cases in the four weeks after they were introduced as compared to areas of the state which did not impose such mandates;

WHEREAS, evidence from data from the State of Alabama shows a 11% drop in COVID-19 cases in the four weeks since that state's mask mandate went into effect;

WHEREAS, according to a Vanderbilt University study, hospitals in the State of Tennessee where at least 75% of patients came from mask-mandate counties reported hospitalizations rising by only 30% since July 1, 2020, as compared to a rise of 200% in the same time period when 75% or more of patients came from counties without mask mandates in the State of Tennessee;

WHEREAS, the Governor also has repeatedly and strenuously urged Georgians to adopt a practice that is simple but highly effective at preventing the spread of COVID-19: wearing a face covering or mask when in public;

WHEREAS, specifically, Governor Kemp, through Executive Order 05.12.20.02 and subsequent Executive Orders, has recommended that individuals wear facial coverings over the nose and mouth to mitigate the spread of COVID-19 when they are in public places where they cannot practice social distancing (i.e., staying at least six feet away from other individuals who do not share the same household);

WHEREAS, in early July, Governor Kemp embarked on a statewide "Wear a Mask Tour" flying to numerous Georgia cities to publicly emphasize the need for Georgians to wear masks;

WHEREAS, on July 6, 2020, Governor Kemp introduced the "Georgia Safety Promise," a safety campaign to remind Georgia businesses and the public of following COVID-19 safety guidelines, including wearing face coverings;

WHEREAS, guidelines published by the U.S. Centers for Disease Control (CDC) recommend that all people wear cloth face coverings in public settings where other physical distancing measures may be difficult to maintain. The CDC also advises the use of simple cloth face coverings to slow the spread of the virus and help people who may have the virus and do not know it from transmitting it to others;

WHEREAS, the White House Coronavirus Task Force has repeatedly called for the wearing of masks to be mandatory in the State of Georgia;

WHEREAS, decreased transmissibility due to face covering use could substantially reduce the number of illnesses, hospitalization, and deaths and reduce the negative economic impact of the COVID-19 pandemic and the cost of the intervention of mandating the wearing of masks is extremely low;

WHEREAS, according to the Georgia Department of Public Health Daily Status Report for Monday, August 17, 2020, Georgia now has 237,030 confirmed cases including 1805 confirmed cases in Floyd County; and

WHEREAS, according to the Georgia Department of Public Health Daily Status Report for Monday, August 17, 2020, Georgia now has 4,702 confirmed deaths and 22,087 hospitalizations, and 4,050, admissions to the intensive care unit (“ICU”); and

WHEREAS, according to the Georgia Department of Public Health Daily Status Report for Monday, August 17, 2020, Floyd County has 20 deaths and 135 hospitalizations; and

WHEREAS, on July 8, 2020, appearing before a joint meeting of the Commissions of the City of Rome and Floyd County, and the Mayor and Council of the City of Cave Spring, Dr. Gary Voccio, the Director for Georgia Department of Public Health Northwest District, advocated for face coverings to be worn when it is not possible to socially distance; and

WHEREAS, on July 8, 2020, at the same joint meeting, the CEO of Redmond Regional Medical Center, John Quinlivan, the CEO of the Harbin Clinic, Kenna Stock, and the CEO of Floyd Medical Center, Kurt Stuenkel advocated for masks to be worn in public when social distancing is not possible; and

WHEREAS, on July 8, 2020 Dr. John Hostetler, an infectious disease specialist of the Harbin Clinic, recommended that a mask be worn while in public to reduce the spread of COVID-19; and

WHEREAS, the guidelines set out by the White House to re-open America specifically requires a 14-day downward trajectory of COVID-19 cases; and

WHEREAS, the City of Rome has been in an upward trajectory of COVID-19 infections; and

WHEREAS, this upward trajectory of COVID-19 infections in Georgia is a threat of safety to the occupants and visitors of the City of Rome; and

WHEREAS, if the instances of COVID-19 continues to increase in the City of Rome, the health infrastructure will be heavily burdened by an abundance of illness and an insufficient amount of resources to combat COVID-19 including but not limited to: hospital beds, negative pressure procedural rooms, ventilators, and health care professionals; and

WHEREAS, instituting policies to mitigate risk to citizens of the City of Rome by limiting the spread of COVID-19 infection is crucial to the health, safety, and welfare of the citizens of Rome; and

WHEREAS, the United States Supreme Court held in *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11, 27(1905), that, “[u]pon the principle of self-defense, of paramount necessity, a community has the right to protect itself against an epidemic of disease which threatens the safety of its members”; and

WHEREAS, the United States Supreme Court held in *Barbier v. Connolly*, 113 U.S. 27, 31(1884), that the legislature has broad and inherent powers to pass laws that promote the public’s health, safety, and welfare; and

WHEREAS, requiring persons wear face coverings in public when it is impossible to socially distance is an appropriate action to take to promote the health, safety, and welfare of citizens of the City of Rome; and

WHEREAS, requiring a face covering be worn in public when it is impossible to socially distance is a necessary balance between being free from undue governmental restrictions and yet promoting public health, safety, and welfare; and

WHEREAS, pursuant to Section 2-10 of the Charter of the City of Rome, Georgia, and Sections 7-5, 7-11, and 7-37 of the Rome Code of Ordinances, the Commission has the right, duty, power, privilege and authority to exercise and enjoy all other powers, duties, functions, rights, privileges, and immunities necessary and proper to promote or protect the safety, health, peace, security and general welfare of said government and its inhabitants and to exercise all implied powers necessary to carry into execution all powers granted in this Charter and Code as fully and completely as if such powers were fully enumerated herein and to do and perform all of the acts pertaining to its property, affairs and local government which are necessary or proper in the legitimate exercise of its corporate powers and governmental duties and functions; and

WHEREAS, pursuant to O.C.G.A. Sec. 38-3-28 and Rome Ordinances 7-5 and 7-11, the Commission is authorized to make, amend, and rescind orders, rules, and regulations as necessary for emergency purposes and to supplement carrying out the emergency management laws; and

WHEREAS, this Ordinance is intended to be entered with due regard to the widely accepted, scientifically proven uniform principle that masks or facial coverings will slow the spread of COVID-19;

WHEREAS, pursuant to O.C.G.A. Sec. 38-3-51, the Governor’s declared public health emergency authorizes the Commission to use emergencies powers in O.C.G.A. Sections 38-3-1 through 38-3-64; and

WHEREAS, pursuant to O.C.G.A. Sec. 38-3-6, during an emergency, O.C.G.A. Sections 38-3-1 through 38-3-64 are to be liberally construed to effectuate their purposes;

WHEREAS, on August 15, 2020, Governor Kemp issued Executive Order 08.15.20.01 which specifically offers guidelines for local government mask mandates;

WHEREAS, the Commission of the City of Rome, with advice and input from community members and health care professionals, recognizes the emergency conditions that have resulted from the virulent spread COVID-19 throughout the geographical boundaries of the City of Rome; and

WHEREAS, the Commission of the City of Rome recognizes the need for precautions to be made in an effort to protect the citizens of the City of Rome;

WHEREAS, the following actions related to requiring facial coverings in public are necessary and appropriate to balance the public's interest in not being unduly burdened with the compelling public interest of providing for the health, safety and welfare of the residents of the City;

WHEREAS, the goal of this Ordinance is to increase the usage of facial coverings and masks and not revenue generation; and

NOW, THEREFORE, the Commission of the City of Rome, Georgia hereby ordains that it is hereby declared that a local state of emergency continues to exist within the geographical limits of the City of Rome, Georgia, and that it shall continue through and including September 23, 2020.

NOW, THEREFORE, BE IT ORDAINED that for the protection of members of the public, facial coverings or masks shall be required within the City to slow the spread of COVID-19, the Commission of the City of Rome, Georgia hereby ordains and orders the following:

SECTION 1.

- (a) The provisions of this Ordinance shall only be enforced in the portions of the city that are located in a county in which the prevalence of confirmed cases of COVID-19 over the previous fourteen (14) days is equal to or greater than one hundred (100) cases per one hundred thousand (100,000) people according to the Georgia Department of Public Health.
- (b) For purposes of this Ordinance, the following terms are hereby defined as follows:
 - (1) *Entity* means any private business, establishment, corporation, non-profit corporation, or organization, including the curtilage thereof.
 - (2) *Facial covering or mask* means a device to cover the nose and mouth of a person and impedes the spread of saliva, respiratory droplets, or other fluids during speaking, coughing, sneezing or other intentional or involuntary action. Medical grade masks are not required; coverings may be fashioned as advised by the CDC and from other suitable fabrics. The mask must cover the mouth and nose of the wearer.

- (3) *Polling place* means the room provided in each precinct for voting at a primary or election.
 - (4) *Public place* means any place other than a personal vehicle, residential property, or an entity including the curtilage thereof.
- (c) Except as otherwise provided in this Ordinance all persons in an entity or a public place shall wear a facial covering or mask over the mouth and nose at all times where other physical distancing measure may be difficult to maintain from non-cohabitating persons.
- (d) Facial coverings or masks are not required in the following circumstances:
- (1) In personal vehicles or upon residential property;
 - (2) When a person is alone in enclosed spaces or only with other household members;
 - (3) When the individual has a bona fide religious objection to wearing a facial covering or mask;
 - (4) While drinking or eating;
 - (5) When a licensed healthcare provider has determined that wearing a facial covering or mask causes or aggravates a health condition for the individual or when such person has a bona fide medical reason for not wearing a facial covering or mask;
 - (6) When wearing a facial covering or mask would prevent the receipt of personal services or performing work in the course of employment;
 - (7) When complying with the directions of a law enforcement officer or for the purposes of verifying a person's identity, such as when purchasing alcohol, tobacco, or prescription drugs or when engaging in a financial transaction;
 - (8) Children under the age of ten (10) years;
 - (9) When the individual is having difficulty donning or removing a face mask or face covering without assistance;
 - (10) At any polling place and no individual shall be denied ingress or egress to or from a polling place for failure to wear a facial covering or mask; and
 - (11) When outdoors and maintaining social distancing from anyone other than individuals with whom they cohabit.
- (e) (1) Every entity subject to this Ordinance which does not consent to enforcement of this Ordinance upon its property shall post a clearly legible sign in one inch Arial

font at all public entrances of such entity stating the following:

“This location does not consent to enforcement of any local face covering requirement upon this property.”

- (2) If an entity does not post the signage described in subparagraph (1) of this paragraph it shall be conclusively presumed to have consented to enforcement of this Ordinance on its property and failures by individuals to wear facial coverings or masks as required by this ordinance shall be determined to be violations and enforced as contemplated in paragraph (f).
- (f) Violations of this Section 1 may be enforced by a notice of ordinance violation issued by any police officer, code enforcement officer, or other authorized law enforcement official, as provided below:
- (1) A person who fails to comply with paragraph (c) of Section 1 of this Ordinance shall be first given a warning and an opportunity to put on a facial covering or mask, leave the entity, or comply with one of the exceptions in paragraph (d) of Section 1.
 - (2) If the person violating this Ordinance refuses or fails to comply with this Ordinance after being given a warning pursuant to subparagraph (1) of this paragraph then such person may be subject to a civil penalty of not more than \$25.00 on the first offense and not more than \$50.00 on the second and any subsequent offenses.
 - (3) A notice of violation may be served by delivery into the hands of the suspected violator or by other reasonable process for serving notice of ordinance violations used by the City.
 - (4) Violations of this ordinance shall not be enforced against any entity and shall not be taken against any owner, director, officer, or agent of an entity for the failure of their customers to comply with this ordinance.
 - (5) Notwithstanding the foregoing, every effort shall be made to bring an individual into voluntary compliance with the terms of this Ordinance prior to issuance of any notice of violation, including providing complimentary masks, explaining the importance of wearing facial coverings during this pandemic, and issuing verbal and written warnings.
- (g) In all locations where facial coverings or masks are not required to be worn pursuant to this Ordinance, they are strongly encouraged to be worn.

SECTION 2.

This Ordinance shall be effective immediately and shall remain in effect until revised or repealed by further action of the City Commission.

SECTION 3.

Should any provision, paragraph, sentence, or word of this Ordinance be rendered or declared invalid by any final court of competent jurisdiction, the remaining provisions, paragraphs, sentences, or words of this Ordinance shall remain in full force and effect.

SECTION 4.

Should any ordinance or part thereof be found to conflict with this ordinance or the provisions thereof, then those sections contained herein shall be deemed controlling.

IT IS HEREBY ORDERED, this ____ day of August, 2020.

CITY OF ROME, GEORGIA

BILL COLLINS, Mayor

Attest:

JOSEPH SMITH, Clerk

Approved as to Form:

J. ANDERSON DAVIS, City Attorney