

MINUTES  
JUNE 29, 2020  
SPECIAL EMERGENCY TOWN COUNCIL MEETING  
2:00 P.M.

Town of Edisto Beach  
Town Hall  
2414 Murray Street  
Edisto Beach, SC 29438

Present: Jane S. Darby, Mayor, Jerome Kizer and Patti Smyer, Council Members, Councilmember Susan Hornsby joined the meeting via telephone; *Quorum of Council Present*. Absent: Mayor Pro Tem Crawford Moore.

Mayor Darby called the meeting to order. The general consensus of Council was to discuss Ordinance 2020-21 prior to a motion being made. Town Attorney Duffie agreed that this was acceptable.

Mayor Darby asked for Council comments. Councilwoman Smyer questioned the age requirement and Attorney Duffie explained the Tender Years Doctrine which addresses enforceability under age ten. That is why the Ordinance reads that “face coverings are not required... when a person is 10 years of age or younger.” Councilwoman Smyer also questioned the fine amount of \$25.00 and wondered if it was high enough. Mayor Darby explained the fine was for each offense.

Councilman Kizer raised concerns about enforcement issues and cited a burden to businesses. Attorney Duffie explained the enforcement would not be up to the employees of individual businesses. The section of the Ordinance in question (Paragraph 7) refers to employees being required to wear face coverings, not having to enforce the wearing of face coverings. Businesses do not have to require customers wearing face coverings. Attorney Duffie, “There is no requirement for businesses to report customers that don’t have masks or refuse customers that don’t have masks. We don’t have either one of those requirements. The enforcement is on the Town as it relates to customers or citizens in general.”

Mayor Darby said, “When we left here on Friday, just so people know, I was....anxious to hear the Governor’s press conference, hoping that he would (enact a similar Order) statewide. Since he did not, that’s the reason we’re here today.”

Councilwoman Hornsby told those in attendance that she was appreciative of the clarification on whether of not the businesses would be responsible for enforcement. “For me, this is a personal responsibility, but I also happen to occupy this seat on Council. That makes me personally responsible for this community. I have one question, is there a time limit on this Ordinance?” Attorney Duffie said that all Emergency Ordinances could only be enacted for sixty (60) days by law. Council may choose to rescind the Ordinance prior to expiration. Councilwoman Hornsby expressed concern over enforcement issues. Attorney Duffie clarified, “When (the Governor) says ‘It’s not enforceable’...I believe he means it’s practically not enforceable because of the numbers that are involved. Legally, it is enforceable.”

Mayor Darby addressed foreseen future issues and commended the Town Administrator for addressing those online. “This Ordinance does not...require a mask on the beach as long as social distancing is observed. It does not require a mask in your personal vehicle, actively exercising or in your home with people with whom you reside. I want to remind everybody, wearing a mask should not make you complacent. It is not the total picture. Remember it is only one part of the protection regimen that you should be practicing. Masks should be combined with social distancing, hand washing, using hand

sanitizers, cleaning frequently touched surfaces and avoiding touching your mouth, nose and eyes. So it's just part of the complete solution so that you are not contaminating someone else, and they are not finding you an easy host for the virus."

Kelly Moore asked about the Bay Creek Park vendors and whether or not they will be required to wear masks per the Ordinance. Attorney Duffie stated that since the market is not indoors, the Ordinance would not apply to vendors or customers at the Market.

Councilman Kizer asked if the Town would be providing masks. Administrator Hill said that an order of 500 has been placed and is expected to be delivered in the next few days. Mayor Darby has arranged for masks at the food pantry through a grant.

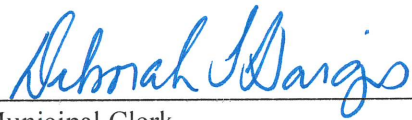
Council members read the Ordinance into the record. A copy of Ordinance No. 2020-21 is attached to these minutes.

Councilwoman Smyer moved to approve Ordinance No. 2020-21 related to protective masks during the COVID-19 pandemic, seconded by Councilwoman Hornsby and approved 3 – 1 with Councilman Kizer dissenting.

Councilwoman Smyer moved to adjourn the meeting, seconded by Councilman Kizer and approved 4 – 0.

*The media/public was notified of the Special Emergency meeting location, date and time on Sunday, June 28<sup>th</sup>, 2020.*

APPROVED BY TOWN COUNCIL



Municipal Clerk  
July 9, 2020

**TOWN OF EDISTO BEACH**  
**EMERGENCY ORDINANCE 2020-21**

**Emergency Ordinance Requiring that Face Coverings Be Worn in Certain Circumstances  
in the Town of Edisto Beach During the COVID-19 Public Health Emergency**

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 declared a world-wide pandemic; and

WHEREAS, on March 13, 2020, the President of the United States declared a National Emergency for the United States and its territories to reduce the spread of the virus; and

WHEREAS, on March 13, 2020, the Governor of the State of South Carolina Henry McMaster declared a state of emergency for the State of South Carolina which he has renewed and is currently in effect; and

WHEREAS, S.C. Code Ann. §5-7-250 empowers Council to enact emergency ordinances affecting life, health, safety, or property; and

WHEREAS, on June 24, 2020 South Carolina Attorney General Alan Wilson issued a public written statement wherein he gave the opinion that municipalities in South Carolina may lawfully enact emergency ordinances requiring the wearing of masks as a measure to protect against the spread of COVID-19 and that generally these ordinances do not violate constitutional rights. A copy of this statement is attached to this ordinance as Exhibit A for reference; and

WHEREAS, COVID-19 has spread across the state with the South Carolina Department of Health and Environmental Control (“SCDHEC”) confirming the localized person-to-person spread of COVID-19 in South Carolina, which indicates a significantly high risk of exposure and infection creating an extreme public health risk; and

WHEREAS, as of June 28, 2020, there were 33,221 confirmed cases throughout the State of South Carolina, 3380 cases in Charleston County and 306 cases in Colleton County, and 712 deaths statewide, 23 deaths in Charleston County and 21 deaths in Colleton County; and

WHEREAS, at the City of Columbia Council meeting on June 23, 2020, which has been broadcast via YouTube, Dr. Linda Bell, State Epidemiologist, stated “We are now a state on the national picture among a handful of other states considered to be hot spots” and that 42% of all reported positive cases since the start of reporting to SCDHEC in March have been reported in the last two weeks, noting that this is a very troubling trend telling us that not enough people are taking this pandemic seriously enough or adopting the measures that have been recommended such as mask wearing. Dr. Bell stated that masks have an important role in stopping the spread; and



WHEREAS, the MUSC COVID-19 Situation Assessment for the Tri-County area for June 24 now indicates status “RED” for three important indices: (1) the 7 day average of confirmed cases from day to day, which is above 8.3%, (2) the sustained reduction in new cases index in the number of daily cases for a 14 day period, which is actually now on an upward trajectory, and (3) the number of reported cases per 10,000 people per week where 5 or more moves the index into “RED” with the actual number this week being 18.5. The Situation Assessment also states the number of patients hospitalized for COVID-19 has increased substantially over the past several weeks at MUSC and “social distancing and mask use should be vigorously promoted or mandated”; and

WHEREAS, testing reports from SCDHEC as of June 28 indicate that percent positive graphs, which show trends in the percent of cases of COVID-19 relative to the number of tests performed, demonstrate a significant recent increase, measuring 19.6% on June 26 and 20.1% on June 27 compared to 7% to 9% at the end of May; and

WHEREAS, the number of cases is growing rapidly and if COVID-19 continues to spread in the Lowcountry, the number of persons relying on medical, pharmaceutical, and general cleaning supplies will increase, the private and public sector work force will be negatively impacted by absenteeism, and the demand for medical facilities may exceed locally available resources; and

WHEREAS, it is vitally important that we all work together to decrease the widespread proliferation of COVID19 among us all now rather than suffer the unfortunate and devastating consequences later; and

WHEREAS, the Centers for Disease Control and Prevention (“CDC”) and SCDHEC advise the use of cloth face coverings to slow the spread of COVID-19; and

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

WHEREAS, in order to protect, preserve, and promote the general health, safety and welfare and the peace and order of the community, the Town is taking steps to try to protect the citizens and employees of the Town and visitors to the Town from increased risk of exposure; and

WHEREAS, restaurants, business establishments which sell prepared food and beverages, retail stores, salons, barber shops, grocery stores, convenience stores, gas stations, and pharmacies are determined by the Council to be places where the public may patronize indoors in larger numbers, particularly due to the relatively few number of these businesses in town versus the tourist season population, and where social distancing practices may not be practical; and

WHEREAS, in light of the foregoing, Town Council deems it proper and necessary to adopt this Emergency Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Town Council of the Town of Edisto Beach, South Carolina this 29<sup>th</sup> day of June, 2020 that face coverings shall be required in public places within the Town to slow the spread of the novel coronavirus disease, known as COVID-19, as follows:

1. For the purposes of this Ordinance and as used herein, “face covering” means a uniform piece of cloth, fabric, or other material that securely covers a person’s nose and mouth and remains affixed in place without the use of one’s hands. Face coverings include, but are not limited to, bandanas, medical masks, cloth masks, scarves, and gaiters, provided that they are worn such that they securely cover the person’s nose and mouth.

2. All persons entering a restaurant, business establishment which sells prepared food and beverages, retail store, salon, barber shop, grocery store, convenience store, gas station, and pharmacy in the Town shall wear a face covering at all times while inside the business establishment unless exempted as provided in Paragraphs 4 and 5 herein.

3. All restaurants, business establishments which sells prepared food and beverages, retail stores, salons, barber shops, grocery stores, convenience stores, gas stations, and pharmacies in the Town shall require their employees to wear a face covering at all times while having face to face interaction with the public unless the employee is exempted as provided in Paragraphs 4 and 5 herein.

4. Any person who is unable to safely wear a face covering due to age, an underlying health condition, or is unable to remove the face covering without the assistance of others is exempt from this Ordinance.

5. Face coverings are not required in the following circumstances:

- a. While drinking, eating, or smoking;
- b. When wearing a face covering would prevent the receipt of personal services;
- c. For people whose religious beliefs prevent them from wearing a face covering;
- d. When a person is 10 years of age or younger.

6. A person who fails to wear a face mask in compliance with Paragraph 2 violates this Ordinance and shall be guilty of a civil infraction, punishable by a fine of not more than \$25.00.

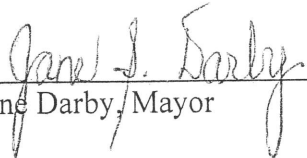
7. A person who fails to comply with Paragraph 3 violates this Ordinance and shall be guilty of a civil infraction, punishable by a fine of not more than \$100.00. Each day of a continuing violation of Paragraph 3 of this Ordinance shall be considered a separate and distinct offense. In addition to the fines established by this paragraph, repeated violations of this Ordinance by a person as defined in this Paragraph 7 may, subject to all procedural protections set forth in the Town Code, result in the suspension or revocation of any occupancy permit or business license issued to a business where the repeated violations occurred. Repeated violations of this Ordinance are additionally hereby declared to be a public nuisance, which may be abated by the Town by restraining order, preliminary and permanent injunction, or other means provided for by the laws of this State. For the purposes of enforcement of Paragraph 3 of this Ordinance, “person” shall be defined in this Paragraph 7 as any individual associated with the business establishment subject to Paragraph 3 of this Ordinance who has the control or authority and ability to enforce the

requirements of this Ordinance within the business establishment, such as an owner, manager, or supervisor. "Person" also includes an employee or other designee who is present at the business but does not have the title of manager, supervisor, etc., but has the authority and ability to ensure the requirements of this Ordinance are met while the business establishment is open to the public.


8. Should any provision, 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, paragraphs, sentences, or words of this Ordinance as hereby adopted shall remain in full force and effect.

9. This Ordinance is effective as of 6:00 a.m., Wednesday, July 1st, 2020. This Ordinance shall be terminated by the issuance of another ordinance or shall automatically expire on the 61st day after enactment of this Ordinance, whichever date is earlier.

Enacted this day of 29<sup>th</sup> day of June 2020, by the Town Council of the Town of Edisto Beach, South Carolina.

  
Jane Darby, Mayor

Attest:

  
Iris Hill, Town Administrator

Approved as to form: 



## **Exhibit A to Town of Edisto Beach Emergency Ordinance 2020-21**

### **Attorney General Wilson's statement on local mask ordinances**



(COLUMBIA, S.C.) – June 24, 2020 – My office has recently received a number of calls regarding the city ordinances passed by Greenville and Columbia that concern the wearing of masks within those cities' jurisdictions and under certain conditions. I want to provide a general answer to this issue. Before I provide the answer I want to make it perfectly clear that our office is not endorsing, defending or even attacking these ordinances.

The only question before my office is whether a city can lawfully pass this type of ordinance? The short answer to that question is – yes, a city can pass this type of ordinance. Our state constitution and state laws have given cities the authority to pass these types of ordinances under the doctrine of Home Rule. The basic premise behind the Home Rule doctrine is to empower local governments (i.e., towns, cities and counties) to effectively govern themselves without interference from state government. There are limits to this power.

One limit to this power would be if the S.C. General Assembly were to preempt a city from passing an ordinance through some state law or specifically prohibit a city from passing an ordinance through some state law. For example, it is our position that a city cannot pass its own gun laws because a state law specifically preempts this action. However, in this case there is no state law that preempts or prohibits a city from passing this particular ordinance.

Another limitation on cities passing these kinds of ordinances is that the ordinance cannot be arbitrary or capricious. In other words, if there were no COVID 19 pandemic or public health emergency going on a court might find the requirement to wear a mask arbitrary. That is not the case here.

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If there was a riot (as there was a few weeks ago) a city could pass a curfew to get control of the civil unrest. A city could require a mandatory evacuation in the event of a local flood. Normally, a city could pass an emergency order requiring people to leave an area or stay in a particular area for a period of time. An exception to this would be if the Governor issued an emergency executive order then that would preempt a city from passing a different emergency order. This

was our position two months ago when cities were passing their own emergency lock-down orders after Governor McMaster issued his state of emergency order. That remains our position today.

The final limitation would be if an ordinance violated a person's constitutional rights. A city has the right to pass these ordinances and the only way to know if someone's constitutional rights have been violated by these ordinances would be on a case by case basis involving very specific facts. In other words, an otherwise lawful ordinance can be applied in a way that violates someone's rights. Based on court precedent, simply requiring someone to wear a mask at the grocery store, or stop smoking in a restaurant, or be home before curfew does not constitute a violation of rights. We would need specific facts to make that determination and we do not have those facts at this time.

One other issue that has been brought to our attention involves a law (Section 16-7-110) that prohibits the wearing of masks in public and how this law could subject people to prosecution for obeying a city ordinance that requires the wearing of a mask in commercial establishments. Basically, you have state law that says you cannot wear a mask and city ordinance that says you must wear a mask. It is important to understand that this law was passed in 1962 with the intention of preventing members of the Ku Klux Klan from concealing their identities while committing acts of terrorism. With that in mind, this statute, in our opinion would not be applicable to the mask ordinances because the wearer is not attempting to conceal their identity but to comply with a city health ordinance.

Any other statutes which may have been cited to this office as conflicting with the city ordinances would be reconciled by a future court as inapplicable.

Many people are upset about these ordinances and I can understand their frustration. However, just because you believe something is bad government does not make it unconstitutional government. Sometimes the remedy for a bad government action is not a legal remedy but a political remedy at the ballot box. I hope this helps people understand my position better. If I thought these ordinances were unlawful, I promise you I would be seeking a legal remedy.

Read more: <http://www.scag.gov/archives/40771#ixzz6QmWmavYk>