

MAYOR
Hal J. Rose

DEPUTY MAYOR
John Dittmore

COUNCIL MEMBERS
Dan Batcheldor
Pat Bentley
Daniel McDow
Stephen Phrampus
Andrea Young



CITY HALL
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West Melbourne, FL 32904
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TO: The Honorable Hal J. Rose, Mayor
The Honorable John Dittmore, Deputy Mayor
The Honorable Dan Batcheldor, Council Member
The Honorable Pat Bentley, Council Member
The Honorable Daniel McDow, Council Member
The Honorable Stephen Phrampus, Council Member
The Honorable Andrea Young, Council Member

FROM: Scott Morgan, City Manager

A handwritten signature in blue ink that reads "Scott Morgan".

DATE: May 4, 2021

SUBJECT: Governor's Preemption of Emergency Masking Ordinance No. 2020-05

On July 16, 2020, seeking to slow the spread of COVID-19 infections, the City Council adopted an emergency ordinance requiring businesses to post their face covering policy and, with some exceptions, requiring the use of face coverings within identified essential businesses. A copy of the ordinance is attached as "Attachment 1". The ordinance was originally scheduled to sunset on August 31, 2020, and the sunset date had been extended one week at a time by the City Manager based upon local COVID-19 case data and the Governor's continued declaration of a COVID-19 state of emergency, as authorized under Section 11 of the ordinance.

Late yesterday, Governor DeSantis issued Executive Order Number 21-102. A copy of the Governor's order is attached as "Attachment 2". The Governor's order preempts the City Council's emergency ordinance, and as such West Melbourne's ordinance is no longer in effect. By copy of this memo, the Police Department has been directed to communicate this information to the West Melbourne essential businesses where the face covering requirements of the ordinance formerly applied.

During the time the City's ordinance was in effect, a high rate of voluntary compliance with the ordinance was achieved locally thanks largely to the good citizens and responsible businesses of West Melbourne and in part due to the work of our Building and Police Departments in communicating with citizens and the identified essential businesses the requirements of the former ordinance. No City fines were ever imposed under the ordinance upon any citizen or businesses, and the West Melbourne City Council can be rightfully proud that our community likely helped in some small way to help slow the spread of COVID-19 during the time our ordinance was in effect.

Mayor Rose and City Council Members
May 4, 2021
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Attachments:

1. Former Emergency Ordinance No. 2020-05.
2. Governor's Executive Order Number 21-102.

c: Morris Richardson, City Attorney
Cynthia Hanscom, City Clerk
Rick Wiley, Police Chief
Tom Forbes, Building Official

EMERGENCY ORDINANCE NO. 2020-05

AN EMERGENCY ORDINANCE OF THE CITY OF WEST MELBOURNE, FLORIDA, PROVIDING FOR INCORPORATION OF RECITALS AS LEGISLATIVE FINDINGS; PROVIDING DEFINITIONS; REQUIRING ALL BUSINESSES TO POST THEIR FACE COVERING POLICY AT THE ENTRY OF THE BUSINESS TO ADVISE CUSTOMERS, PATRONS, EMPLOYEES, AND BUSINESS INVITEES OF SUCH POLICY PRIOR TO ENTERING THE BUSINESS; REQUIRING ESSENTIAL BUSINESSES TO MANDATE FACE COVERINGS FOR EMPLOYEES; REQUIRING INDIVIDUALS TO WEAR FACE COVERINGS WHILE INSIDE ESSENTIAL BUSINESSES, AND OTHER BUSINESSES WITH A POSTED POLICY REQUIRING FACE COVERINGS; PROVIDING EXCEPTIONS; PROVIDING FOR PENALTIES AND ENFORCEMENT; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE, SUNSET, AND EXTENSION BY THE CITY MANAGER; AND PROVIDING FOR NON-CODIFICATION.

WHEREAS, on March 1, 2020, Governor DeSantis issued Executive Order No. 20-51, establishing a Coronavirus Disease 2019 (COVID-19) protocol, directing the State Health Officer to declare a Public Health Emergency, and directing the Florida Department of Health to make determinations as to quarantine, isolation and other necessary public health interventions; and

WHEREAS, on March 1, 2020, the State of Florida Surgeon General and State Health Officer declared that a public health emergency exists statewide in the State of Florida as a result of COVID-19; and

WHEREAS, on March 9, 2020, Governor DeSantis issued Executive Order No. 20-52 declaring a state of emergency for the entire State of Florida as a result of COVID-19; and

WHEREAS, on March 16, 2020, President Trump and the Centers for Disease Control and Prevention ("CDC") announced a strict set of guidelines for Americans to follow for 15 days to "slow the spread" of COVID-19, advising individuals to adopt far-reaching social distancing measures and to avoid discretionary travel, shopping trips, eating out, and social trips; and

WHEREAS, on March 17, 2020, Governor DeSantis issued Executive Order No. 20-68, closing bars and nightclubs, directing parties accessing public beaches to limit gathering size, and reducing the capacity of restaurants in order to mitigate the spread of COVID-19; and

WHEREAS, on March 31, 2020, President Trump updated and extended the previously issued 15 Days to Slow the Spread guidance, renamed it 30 Days to Slow the Spread, and along with the White House Coronavirus Task Force urged Americans to continue to adhere to the guidelines and expand community mitigation efforts; and

WHEREAS, on April 1, 2020, Governor DeSantis issued Executive Order No. 20-91, requiring senior citizens and individuals with significant underlying medical conditions to stay at home and take all measures to limit the risk of exposure to COVID-19, and limiting the

movements and personal interactions of all persons in Florida outside of their home to only those necessary to obtain or provide essential services or conduct essential activities; and

WHEREAS, beginning with Executive Order No. 20-112 on April 29, 2020, Governor DeSantis issued a series of executive orders to re-open Florida and relaxing some of the restrictions set forth in prior executive orders, including Executive Order No. 20-91; and

WHEREAS, on July 7, 2020, the Governor of the State of Florida issued Executive Order No. 20-166, which extends until September 5, 2020, the state of emergency declared by the Governor pursuant to Executive Order No. 20-52; and

WHEREAS, based on the information provided by the Florida Department of Health, the number of COVID-19 cases in Brevard County have increased substantially since the re-opening of the State of Florida; and

WHEREAS, according to the Florida Department of Health, as of July 13, 2020, Brevard County had registered triple-digit new COVID-19 cases for seven consecutive days; and

WHEREAS, according to the Florida Department of Health, as of July 15, 2020, Brevard County zip codes with large numbers of COVID-19 cases included 32904 with 304 cases and 32901 with 231 cases, which zip codes contain the corporate limits of the City of West Melbourne, as well as immediately adjoining 32907 with 296 cases; and

WHEREAS, based on the advice of medical professionals, the number of COVID-19 cases will continue to rise unless measures are instituted to stop the spread of the COVID-19 virus; and

WHEREAS, the State of Florida has the highest percentage of population in the United States 65 years of age and older, as well as the second largest population of that demographic; and

WHEREAS, based upon Census estimates, the demographic of residents 65 years of age and older living in the City of West Melbourne is approximately 20%; and

WHEREAS, according to the CDC and the Florida Department of Health, the majority of persons that test positive for the COVID-19 virus and are hospitalized or die from the virus are persons over the age of 65 years and/or those who have underlying health conditions; and

WHEREAS, according to the CDC, overall, 31% of cases, 45% of hospitalizations, 53% of ICU admissions, and 80% of deaths associated with COVID-19 were among adults aged 65 years of age and older; and

WHEREAS, according to the CDC, COVID-19 spreads mainly from person to person through respiratory droplets produced when a person coughs, sneezes, talks or raises their voice, and these droplets can land in the mouths or noses of people who are nearby, or can possibly be inhaled into their lungs; and

WHEREAS, according to the CDC, recent studies show that a significant portion of individuals with COVID-19 lack symptoms, and that even those who eventually develop symptoms can transmit the virus to others before showing symptoms; and

WHEREAS, CDC guidance states that the spread of COVID-19 can be reduced when cloth face coverings are used along with other preventive measures, including social distancing, frequent handwashing, and cleaning and disinfecting frequently touched surfaces; and

WHEREAS, CDC guidance further states that wearing a cloth face covering will help protect people around you, including those at higher risk of severe illness from COVID-19 and workers who frequently come into close contact with other people; and

WHEREAS, according to the CDC, cloth face coverings are most likely to reduce the spread of COVID-19 when they are widely used by people in public settings; and

WHEREAS, to reduce the spread of COVID-19, the CDC recommends that people wear cloth face coverings in public settings when around people outside of their household; and

WHEREAS, on June 19, 2020, Florida Medical Association President Ronald L. Giffler, MD, JD, MBA, issued a statement urging Floridians to use face coverings to prevent the further spread of COVID-19, and further calling on local officials to adopt regulations requiring the use of masks in public places, specifically stating, "The science is clear. Asymptomatic infected individuals can release infectious aerosol particles while breathing and speaking. Not wearing a mask or face covering increases exposure, whereas universal masking greatly reduces the spread of viral particles. The message is simple: For the sake of your health and the health of everyone around you, Florida's doctors want you to wear a mask."; and

WHEREAS, on June 20, 2020, the State of Florida Surgeon General issued a Public Health Advisory recommending that "all individuals in Florida should wear face coverings in any setting where social distancing is not possible," with exceptions for children under the age of two, individuals with disabilities that prevent them from wearing masks, and people who are working outdoors with proper social distancing; and

WHEREAS, cloth face coverings are relatively inexpensive and readily available as the CDC states that they can be made from household items, and as the CDC provides online guidance for making "do-it-yourself" coverings for people who cannot or do not want to buy one from the increasing number of sources producing and selling coverings; and

WHEREAS, the CDC does not recommend wearing a cloth face covering for children under the age of two, or anyone who has trouble breathing, or is unconscious, incapacitated, or otherwise unable to remove a mask without assistance; and

WHEREAS, Sections 876.12 through 876.15 of the Florida Statutes make it unlawful to wear a mask, however, Section 876.155, Florida Statutes, makes clear that this prohibition of mask-wearing only applies when there is also evidence that there is an intent to intimidate other people, deprive them of equal protection under the law, or engage in criminal conduct; and

WHEREAS, the continued operation of businesses providing essential goods and services is necessary to serve the public and to support the local economy; and

WHEREAS, the City Council has determined that it is in the best interest of the residents of the City of West Melbourne, and that it is in furtherance of the public health, safety, and welfare, to adopt this ordinance requiring all businesses to post their face covering policy so that the public may make informed decisions prior to entering a business, requiring certain essential businesses to mandate face coverings for their employees, and requiring all individuals to wear face coverings inside certain essential businesses; and

WHEREAS, the City Council makes a legislative finding that an emergency situation exists because of COVID-19, the increase in COVID-19 cases in Florida and Brevard County, and the issuance of Executive Order No. 20-166, and that the immediate enactment of this emergency ordinance is necessary as authorized by section 166.041(3)(b), Florida Statutes.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of West Melbourne, Florida, as follows:

Section 1. Incorporation of Recitals as Legislative Findings. The recitals of this emergency ordinance are incorporated herein and constitute the legislative findings of the City Council. The recitals are made fully a part of this emergency ordinance as if the recitals were set out in a section hereunder.

Section 2. Definitions. The following terms used in this emergency ordinance are defined as follows:

a. "Essential Business" shall mean, for purposes of this emergency ordinance, those grocery or food stores, hardware and home improvement stores, and retail drug stores in excess of 12,000 square feet, as identified on **Exhibit A** attached hereto.

b. "Face Covering" shall mean a uniform piece of material that securely covers a person's nose and mouth and remains affixed in place without the use of one's hands, whether factory-made, hand sewn, or improvised from household items.

Section 3. All Businesses Required to Post Face Covering Policy at Entry. Every business in the City of West Melbourne with a storefront that allows customers in the building for the purpose of purchasing goods or services is required to post its Face Covering policy on or at the entry doorway. The Face Covering policy shall be posted in a clearly visible manner so that customers and business invitees may read the policy prior to entering the business. A business may use a printable face mask notice sign provided by the Brevard County Board of County Commissioners at brevardfl.gov/communications/printable-face-mask-signs, or any other sign that clearly communicates whether Face Coverings are required to be worn within the business.

Section 4. Essential Businesses Required to Mandate Face Coverings for Employees. Every business in the City of West Melbourne defined as an Essential Business in Section 2 herein and identified in **Exhibit A** attached hereto is required to mandate the wearing of Face Coverings for its employees. This requirement does not apply to areas of the

business that are not open to customers or the public, such as offices, break rooms, and stock rooms. Employees who meet one or more of the exceptions set forth in Section 7 herein are not required to wear a Face Covering.

Section 5. Individuals Required to Wear Face Covering Inside Essential Businesses. Each person must wear a Face Covering while inside an Essential Business as defined in Section 2 herein and identified in **Exhibit A** attached hereto. The requirement of this section does not apply to persons who meet one or more of the exceptions set forth in Section 7 herein.

Section 6. Individuals Required to Wear Face Covering Inside Businesses with Clearly Posted Policy. Each person must wear a Face Covering while inside any business with a clearly posted policy requiring the wearing thereof, regardless of whether such business is an Essential Business as defined in Section 2 herein and identified in **Exhibit A** attached hereto. The requirement of this section does not apply to persons who meet one or more of the exceptions set forth in Section 7 herein.

Section 7. Exceptions. The City of West Melbourne recognizes that wearing Face Coverings may not be possible in every situation or for some people. It is not the intent of this ordinance to require the wearing of a Face Covering where such requirement may exacerbate a physical or mental health condition, lead to a medical emergency, or introduce significant safety concerns. Adaptations and alternatives should be considered whenever possible to increase the feasibility of wearing a Face Covering or to reduce the risk of spreading COVID-19 if it is not possible to wear one. The Face Covering requirements in Section 4 through Section 6 herein do not apply to:

- a. Children younger than 6 years of age;
- b. Anyone who has trouble breathing;
- c. People who are deaf or hard of hearing – or those who care for or interact with a person who is hearing impaired – and are unable to communicate effectively while wearing a Face Covering;
- d. People with intellectual or developmental disabilities, sensory sensitivities, or mental or physical health conditions that make it challenging to wear a Face Covering;
- e. Employees who work in a setting where a Face Covering may increase the risk of heat-related illness or cause safety concerns due to the introduction of a hazard (for instance, straps getting caught in machinery).

Section 8. Penalties. It is the intent of this ordinance to seek voluntary compliance with the provisions contained herein, and to educate and to warn of the dangers of non-compliance. However, in the event voluntary compliance is not achieved then, as a last resort, violations of this ordinance shall be enforced as provided below:

- a. Business violations of Section 3, requiring the posting of a Face Covering policy, or Section 4, requiring Essential Businesses to mandate employee Face Coverings, shall be enforced by Code Enforcement. These violations present a serious threat to

the public health, safety, and welfare, and may be irreparable and irreversible in nature. As such, a Code Inspector shall notify the violator and the Code Enforcement Board and request a hearing pursuant to Section 2-94, City of West Melbourne Code of Ordinances. Each day of violation shall constitute a separate violation. Recommended administrative fines are \$100.00 for a first violation; \$250.00 for a second violation; and \$500.00 for each of the third and successive violations. Consistent with Section 2-100, City of West Melbourne Code of Ordinances, in determining the amount of the fine, if any, the Code Enforcement Board shall consider the following factors:

- (1) The gravity of the violation;
- (2) Any action taken by the violator to correct the violation; and
- (3) Any previous violations committed by the violator.

If a fine is imposed, a certified copy of the order imposing such fine may be recorded in the public records of Brevard County. Upon recording, such fine assessed shall constitute a lien against the land on which the violation is found to exist and may be enforced as provided in Chapter 2, West Melbourne Code of Ordinances, and Chapter 162, Florida Statutes.

b. Any violation of Section 5 or Section 6, requiring individuals to wear Face Coverings inside certain businesses, shall be enforced by the West Melbourne Police Department and may be punished by a fine of \$50.00 for the first offense; \$100.00 for the second offense; and \$250.00 for each of the third and successive offenses.

Section 9. Conflicts. In the event of a conflict between this emergency ordinance and any other ordinance, this ordinance shall control while in effect.

Section 10. Severability. The provisions of this ordinance are declared to be severable and if any section, sentence, clause or phrase of this ordinance shall for any reason be held by a court of competent jurisdiction to be invalid or unenforceable, such decision shall not affect the validity of the remaining terms, provisions, clauses, sentences, or sections of this ordinance but they shall remain in effect, it being the legislative intent that this ordinance shall stand notwithstanding the invalidity of any part.

Section 11. Effective Date, Sunset, and Extension by City Manager. This emergency ordinance shall become effective on July 18, 2020 at 8:00 AM, and shall sunset at midnight on August 31, 2020. If circumstances require, the City Manager may extend the operation of this emergency ordinance for successive seven-day periods so long as a COVID-19 state of emergency exists for the State of Florida. Such extensions shall be made in writing, filed with the City Clerk and posted on the City website. The City Council may repeal this ordinance at any time.

Section 12. Non-Inclusion in Code of Ordinances. Given the temporary nature and effect of this emergency ordinance, the provisions of this ordinance shall not be codified and incorporated within the Code of Ordinances of the City of West Melbourne, Florida.

PASSED AND ADOPTED by unanimous vote of the City Council of the City of West Melbourne, Brevard County, Florida, this 16th day of July, 2020.

ATTEST:



CYNTHIA HANSCOM, CITY CLERK





MICHAEL J. ROSE, MAYOR

Reviewed as to form and legal sufficiency:



Morris Richardson, City Attorney

EXHIBIT A
“ESSENTIAL BUSINESSES”

Gordon Food Service – 2655 W. New Haven Avenue, West Melbourne, Florida 32904

The Home Depot – 2829 W. New Haven Avenue, West Melbourne, Florida 32904

Lowe’s Home Improvement – 2150 Minton Road, West Melbourne, Florida 32904

Publix – 2261 W. New Haven Avenue, West Melbourne, Florida 32904

Publix – 145 Palm Bay Road NE, West Melbourne, Florida 32904

Sam’s Club – 4255 W. New Haven Avenue, West Melbourne, Florida 32904

Target – 4305 Norfolk Parkway, West Melbourne, Florida 32904

Walgreens – 3090 W. New Haven Avenue, West Melbourne, Florida 32904

Wal-Mart Supercenter – 845 Palm Bay Road NE, West Melbourne, Florida 32904

West Melbourne Ace Hardware – 3221 W. New Haven Avenue, West Melbourne, Florida
32904

STATE OF FLORIDA

OFFICE OF THE GOVERNOR

EXECUTIVE ORDER NUMBER 21-102

(Suspending All Remaining Local Government Mandates and Restrictions Based on the COVID-19 State of Emergency)

WHEREAS, on March 9, 2020, I issued Executive Order 20-52, declaring a state of emergency for the entire State of Florida as a result of COVID-19; and

WHEREAS, on September 25, 2020, I issued Executive Order 20-244, suspending the collection of local fines and penalties associated with COVID-19 regulations upon individuals, and on March 10, 2021, I issued Executive Order 21-65, categorically remitting all fines upon individuals and businesses alike related to local government COVID-19 restrictions; and

WHEREAS, on March 29, 2021, the Legislature presented, and I signed into law, SB 72 – Civil Liability for Damages Relating to COVID-19, enacted as Chapter 2021-1, Laws of Florida, which provides crucial liability protection to individuals, businesses, educational institutions, religious organizations, and health care providers for liability claims related to COVID-19; and

WHEREAS, on April 27, 2021, I extended the state of emergency initiated by Executive Order 20-52 as necessary to ensure Florida schools remain open for the remainder of the school year, to protect Floridians from being required to produce a so-called vaccine passport as a condition of participating in everyday life, and to implement budgetary response efforts to help Floridians to the greatest extent possible; and

WHEREAS, on April 29, 2021, Surgeon General Dr. Scott Rivkees issued a Public Health Advisory (1) stating that continuing COVID-19 restrictions on individuals, including long-term use of face coverings and withdrawal from social and recreational gatherings, pose a risk of

adverse and unintended consequences, (2) further expanding vaccine eligibility, and (3) advising government offices to resume in-person operations and services; and

WHEREAS, the State of Florida led the national effort to distribute the vaccine to elderly and vulnerable populations and has provided vaccines to nearly 9 million people; and

WHEREAS, every eligible Floridian is now legally permitted to obtain a vaccine, and Florida maintains a sufficient supply for every eligible Floridian who desires a vaccine to be vaccinated; and

WHEREAS, scientific studies show that vaccines protect individuals from COVID-19 and reduce hospitalizations and deaths caused by COVID-19; and

WHEREAS, the State and the majority of local governments have declined to issue mask mandates; and

WHEREAS, a select number of local governments continue to impose mandates and business restrictions, without proper consideration of improving conditions and with no end in sight; and

WHEREAS, due to the tremendous steps the State has taken to protect Florida's most vulnerable populations and rapidly offer vaccines to every eligible Floridian who desires one, local communities lack justification in continuing to impose COVID-19 mandates or restrictions upon their citizens; and

WHEREAS, with my encouragement, the Florida Legislature passed and I signed SB 2006, a measure designed to curb restrictions and closures of businesses during an extended emergency, to add significant accountability and difficulty for the continuation of any local limitation on the rights or liberties of individuals or businesses, and to declare in no uncertain terms that the policy of the State of Florida will favor a presumption of commercial operation and individual liberty with no toleration for unending and unjustified impediments to that liberty; and

WHEREAS, in light of these recently enacted reforms, the widespread vaccination of Florida residents, and the sufficient supply of vaccines for all eligible Florida residents, I find that it is necessary for the State of Florida to enhance its rapid and orderly restoration and recovery from the COVID-19 emergency by preempting and suspending all remaining local emergency restrictions on individuals and businesses and to return day-to-day life back to normal everywhere in the State.

NOW, THEREFORE, I, RON DESANTIS, as Governor of Florida, by virtue of the authority vested in me by Article IV, Section 1(a) of the Florida Constitution and by the Florida Emergency Management Act, as amended, and all other applicable laws, promulgate the following Executive Order:

Section 1. In order to mitigate the adverse and unintended consequences of the COVID-19 emergency and to accelerate the State's recovery, all local COVID-19 restrictions and mandates on individuals and businesses are hereby suspended.

Section 2. This order eliminates and supersedes any existing emergency order or ordinance issued by a county or municipality that imposes restrictions or mandates upon businesses or individuals due to the COVID-19 emergency.

Section 3. For the remaining duration of the state of emergency initiated by Executive Order 20-52, no county or municipality may renew or enact an emergency order or ordinance, using a local state of emergency or using emergency enactment procedures under Chapters 125, 252, or 166, Florida Statutes, that imposes restrictions or mandates upon businesses or individuals due to the COVID-19 emergency.

Section 4. Nothing herein prohibits a political subdivision of the State from enacting ordinances pursuant to regular enactment procedures to protect the health, safety, and welfare of its population. Only orders and ordinances within the scope of Section 1 based on a local state of

emergency or on emergency enactment procedures due to the COVID-19 emergency are hereby eliminated and preempted.

Section 5. This order supersedes Sections 2 and 3 of Executive Order 20-244.

Section 6. This order is effective immediately.



IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Florida to be affixed, at Tallahassee, 3rd day of May, 2021.



RON DESANTIS, GOVERNOR

ATTEST:



SECRETARY OF STATE

FILED
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DEPARTMENT OF STATE
TALLAHASSEE, FL