

## **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](http://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 16<sup>th</sup> day of July, 2020.

**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