

**ORDINANCE NO. 1805
SERIES 2021**

**AN EMERGENCY ORDINANCE AMENDING AND RESTATING THE
REQUIREMENT TO WEAR A FACE COVERING WITHIN THE CITY OF
LOUISVILLE**

WHEREAS, the City of Louisville (the “City”) is a home-rule city and municipal corporation duly organized and existing under and pursuant to Article XX of the Colorado Constitution and Charter of the City; and

WHEREAS, the Novel Coronavirus 2019 (COVID-19) Pandemic is causing widespread human and economic impacts to the City of Louisville; and

WHEREAS, on March 15, 2020, the Mayor of the City of Louisville, pursuant to Chapter 2.32 of the Louisville Municipal Code and C.R.S. § 24-33.5-709, executed a Declaration of Local Disaster Emergency in and for the City of Louisville (the “Mayor’s Declaration”); and

WHEREAS, by Resolution No. 27 adopted on March 16, 2020, the City Council continued in effect the Mayor’s Declaration until terminated by resolution of the City Council; and

WHEREAS, on March 25, 2020, Governor Jared Polis issued Executive Order D2020-017 (the “Statewide Stay-at-Home Order”) ordering Coloradans to stay in place through April 11, 2020 due to the presence of COVID-19 in the state, and which Statewide Stay-at-Home Order was extended by the Governor through April 26, 2020; and

WHEREAS, on April 24, 2020, Boulder County Public Health (“BCPH”) issued a Public Health Order Adopting and Extending State Stay-at-Home Orders (the “Boulder County Stay-at-Home Order”), which continued in effect the terms of the Statewide Stay-at-Home order for those persons residing in Boulder County until May 8, 2020; and

WHEREAS, in the Boulder County Stay-at-Home Order, BCPH found “the health conditions that led to the issuance of [the Statewide Stay-at-Home Order] have not abated in Boulder County”; and

WHEREAS, on April 26, 2020, Governor Polis issued Executive Order D2020-044, introducing the “Safer at Home” phase of slightly relaxed regulation, which permitted some non-critical businesses to open with certain restrictions beginning May 1, 2020, and which regulation became effective within the City of Louisville upon the expiration of the Boulder County Stay-at-Home Order; and

WHEREAS, in the Safer at Home order, Governor Polis provided that nothing in such order prevents a county or municipality from adopting more protective standards than those contained in the order, including but not limited to stay at home orders, mask wearing

requirements in public, or additional protective measures and, if such local measures are adopted, they will become effective within the county or municipality without state approval; and

WHEREAS, the Centers for Disease Control and Prevention (the “CDC”) recommends the wearing of cloth face coverings in public settings where other social distancing measures are difficult to maintain, especially in areas of significant community-based transmission of COVID-19; and

WHEREAS the CDC further recommends the use of simple cloth face coverings to slow the spread of COVID-19 and help people who may have the virus and do not know it from transmitting it to others; and

WHEREAS, the CDC has issued guidelines for cloth face coverings that include tutorials for both sewn cloth face coverings and making cloth face coverings out of common household textile items without sewing; and

WHEREAS, while the City Council encourages cloth face coverings meeting the CDC guidelines, “face covering” has been defined herein to increase flexibility for what may constitute a face covering and thus aid in compliance with the requirements of this Ordinance; and

WHEREAS, on April 22, 2020, the Colorado Department of Public Health and Environment (“CDPHE”) issued Public Health Order 20-26 requiring face coverings for employees of critical businesses and critical government functions; and

WHEREAS, the City of Louisville is a densely populated city within Boulder County, and the City Council finds that the wearing of face coverings by both employees and patrons of businesses and government facilities as set forth herein will best provide for the promotion of health and suppression of disease within the City; and

WHEREAS, the face coverings required by this Ordinance are not surgical masks or N-95 respirators, which are critical supplies that must continue to be reserved for healthcare workers and first responders, as recommended by current CDC guidance; and

WHEREAS, the CDC recommends face coverings not be worn by children under the age of two (2) years, the CDPHE has issued additional guidelines that face coverings not be worn by children under the age of three (3) years in childcare settings, and the American Academy of Pediatrics has issued further recommendations on the use of face coverings by children, all of which have been considered by the City Council and incorporated as set forth herein; and

WHEREAS, on May 5, 2020, the City Council adopted Ordinance No. 1793, Series 2020, an Emergency Ordinance Requiring the Wearing of Face Coverings within the City, which ordinance, as amended, expired August 30, 2020; and

WHEREAS, on July 16, 2020, Governor Polis issued Executive Order D-2020-138,

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which ordered individuals over ten (10) years old to wear a face covering when entering or within any public indoor space, which order was subsequently amended and extended; and

WHEREAS, on July 24, 2020, BCPH amended its Public Health Order 2020-05 Requiring Facial Coverings in Public where Social Distancing Cannot be Maintained to incorporate provisions of the Executive Order ; and

WHEREAS, on August 18, 2020, the City Council adopted Ordinance No. 1799, Series 2020, an Emergency Ordinance Amending and Restating the Requirement to Wear a Face Covering Within the City of Louisville, which ordinance remains in effect until amended or repealed by ordinance of the City Council; and

WHEREAS, on March 23, 2021, CDPHE issued its Ninth Amended Public Health Order 20-36 COVID-19 Dial (the “Dial Order”) that implements levels of restrictions for individuals, businesses and activities to prevent further spread of COVID-19 in Colorado; and

WHEREAS, Governor Polis and CDPHE have continued to ease social distancing protections following the resolution of a December 2020 statewide surge in the number of COVID-19 cases; and

WHEREAS, the CDC, CDPHE, and BCPH have all recommended that members of the public, when they need to interact with others outside the home and especially in settings where many people are present, should cover their mouths and noses to prevent inadvertently spreading COVID-19. One key transmission method for the COVID-19 virus is through respiratory droplets that people expel when they breathe, cough, or sneeze. Moreover, people can be infected with the COVID-19 virus and be asymptomatic yet still be contagious. People can also be contagious 48 hours before developing symptoms. Many people with COVID-19 have mild symptoms and do not recognize that they are infected and contagious and that they can unintentionally infect others; and

WHEREAS, scientific evidence shows that limiting interactions among people slows virus transmission and, as social distancing protections are lifted, that the wearing of facial coverings by individuals while in public areas assists in maintaining reduced virus transmission by reducing the spread of respiratory droplets; and

WHEREAS, the scientific evidence shows that, although there is still a risk of transmitting the COVID-19 virus outdoors, the risk of transmitting COVID-19 is significantly higher when indoors, versus outdoors; and

WHEREAS, according to BCPH as of March 30, 2021, over 90% of Boulder County’s population 70+ years has received at least a partial course of a COVID-19 vaccine; over 75% of the 60-69 year population in Boulder County has received at least a partial course of a COVID-19 vaccine; over 110,000 Boulder County residents, representing over 40% of the eligible population, has received at least 1 course of the COVID-19 vaccine; and 57% of the 50+ year population in the Denver Metro Area has received at least 1 course of a COVID-19 vaccine; and

WHEREAS, the rate of COVID-19 deaths continues to decline in Boulder County, with only one death documented to date during March 2021 due to COVID-19, and statewide hospitalizations remain steady; and

WHEREAS, the State of Colorado is anticipating a significant increase in the supply of COVID-19 vaccine doses that will be available to Colorado residents starting in April 2021, with enough doses for every eligible person anticipated by the end of May 2021; and

WHEREAS, as of April 2, 2021, all residents of Colorado aged 16+ years will be eligible to receive a COVID-19 vaccine; and

WHEREAS, the scientific evidence shows that available COVID-19 vaccines are extremely effective at both preventing COVID-19 infection and transmission of the Sars-CoV-2 virus; and

WHEREAS, on April 5, 2021, BCPH adopted Public Health Order 2021-03 Amendment of Public Health Order 2021-02 Requiring Facial Coverings in Public where Social Distancing Cannot be Maintained, which order eliminates the requirement for facial coverings in outdoor spaces; and

WHEREAS, the City Council finds the facial covering requirements set forth herein can work in concert with reduced social distancing protections currently in place pursuant to public health orders to minimize the spread of COVID-19 by reducing the exposure of individuals to the virus necessary to protect vulnerable populations and to prevent the health care system from becoming overwhelmed, and should therefore remain in effect until amended or repealed by future ordinance of the City Council; and

WHEREAS, the City Council finds and declares it has the power and authority to adopt this ordinance pursuant to C.R.S. § 31-15-103 (concerning municipal police powers), C.R.S. § 31-15-401 (concerning municipal police powers), C.R.S. § 31-15-501 (concerning municipal authority to regulate businesses), Article XX of the Colorado Constitution (concerning municipal home rule), and the City of Louisville Home Rule Charter; and

WHEREAS, the City Council finds that an emergency exists because the preservation of public property, health, safety, and welfare requires the City to take immediate action to ensure the health of all City residents, public and private employees, business patrons, and to ensure recipients of government services are protected to the greatest extent possible from transmission of COVID-19 while engaging in commercial and governmental transactions within the City during the Pandemic.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOUISVILLE, COLORADO:

Section 1. **Definitions.** For purposes of this Ordinance, the following words and phrases shall have the following meanings:

A. *Face covering* shall mean a uniform piece of cloth or other similar material that fits snugly but comfortably against the side of the face and covers the nose and mouth and remains affixed in place without the use of one's hands.

B. *Person* shall mean and include a natural person, non-profit corporation, or a business association (however defined by the law).

C. *Public indoor space* shall mean any enclosed indoor area that is publicly or privately owned, managed, or operated to which individuals have access by right or by invitation, express or implied, and that is accessible to the public, serves as a place of employment or is an entity providing services. Public indoor spaces include all enclosed indoor areas except for a person's residence.

D. *Residence* shall mean the real property upon which a person resides with other members of the person's household, including a room in a motel or hotel or a residential room for students at an educational facility. Residence does not include any common areas that may be used in multiple households. Residence also includes a motor vehicle when being used for personal use by a person or the person's same household.

Section 2. **Face Coverings Required.** It shall be unlawful:

A. For any person to enter, move within, or remain within any public indoor space, that is not the person's residence, without wearing a face covering.

B. For any person who owns, or who is in responsible control of, a public indoor space to allow or permit to remain within such public indoor space any person who is not wearing a face covering.

C. For any person not to wear a face covering while using or waiting to use the service of any taxi, bus, light rail, train, car service, ride-sharing or similar service or mass transportation operations.

Section 3. **Exceptions.** Nothing herein shall require the wearing of face coverings by the following:

A. Children under the age of two (2) years, except in child care environments, where children under the age of three (3) years and children of any age while napping shall not be required to wear face coverings

B. Any child aged twelve (12) years or younger for whom the only available face covering would pose a possible choking or strangulation hazard; any child aged twelve (12) years or younger that has difficulty breathing with a face covering or is unconscious,

incapacitated, or otherwise unable to remove the face covering without assistance; or any child aged twelve (12) years or younger for whom wearing a face covering would increase the risk of getting exposed to the virus because they are touching their face more often;

C. Persons who cannot medically tolerate a face covering.

D. Persons who are seated at a food service establishment.

E. First responders, including police officers, firefighters, and emergency medical technicians, who are actively involved in a public safety role.

F. Persons who are hearing impaired or otherwise disabled or who are communicating with someone who is hearing impaired or otherwise disabled and where the ability to see the mouth is essential to communication.

G. Persons who enter a place of business or receive a service and are asked to temporarily remove face coverings for purposes of identifying those persons.

H. Persons who are receiving a personal service where the temporary removal of a face covering is necessary to perform the service.

I. Persons who are officiating or participating in a life rite or religious service where the temporary removal of a face covering is necessary to complete or participate in the life rite or religious service, so long as the individual maintains at least twenty-five (25) feet distance from non-household members indoors and at least six (6) feet distance from non-household members outdoors.

J. Persons who are permitted under state orders to remove their masks so long as the person maintains at least twenty-five (25) feet distance from non-household members indoors and at least six (6) feet distance from non-household members outdoors.

K. Persons who are alone in a room with other members of their same household.

L. Persons who are in a swimming pool and actively engaged in a pool activity in which their face covering might become wet.

M. Waivers granted by CDPHE for certain indoor activities that take place for a limited time period if such activities cannot be practically or safely be performed while wearing a mask as long as those activities are explicitly permitted without a face covering pursuant to Boulder County Public Health's sports guidance.

N. When a student in a classroom setting for academic credit at a K-12 school is actively playing an instrument that cannot otherwise be played while wearing a face covering.

Section 4. **Required Signage.** All public indoor places shall display at each entrance a sign provided by the City advising all persons of the requirements of this Ordinance, and that it is unlawful to enter such public indoor place without a required face covering.

Section 5. **Violations; Penalty.** Any person charged with a violation of this Ordinance, upon conviction thereof, shall be subject to the General Penalty in Chapter 1.28 of the Louisville Municipal Code, which provides for incarceration for a period not to exceed three hundred sixty-four (364) days, a fine not to exceed two thousand six hundred and fifty dollars (\$2,650.00), or both such fine and imprisonment. As provided in Section 1.28.010.B, each and every day during any portion of which any violation is committed, continued or permitted shall be a separate violation, and the violator shall be punished accordingly.

Section 6. **Violations; License Suspension or Revocation.** In addition to the penalties provided in Chapter 1.28 of the Louisville Municipal Code, a violation of this Ordinance may be cause for suspension or revocation of any license issued by the City following notice and hearing before the applicable licensing authority or summary, temporary suspension of a license when the noncompliance presents an immediate threat to health, safety, and welfare.

Section 7. **Effective Date** This ordinance shall become effective immediately and continue in effect until amended or repealed by ordinance of the City Council.

Section 8. **More Restrictive Requirements Control.** To the extent any federal, state, or county regulations, orders, or laws are enacted that are more restrictive than the requirements of this Ordinance, the more restrictive shall control.

Section 9. **Provisions Severable.** If any portion of this ordinance is held to be invalid for any reason, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each part hereof irrespective of the fact that any one part be declared invalid.

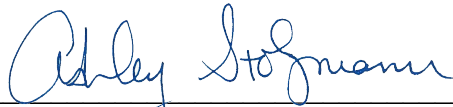
Section 10. The repeal or modification of any provision of the Municipal Code of the City of Louisville by this ordinance shall not release, extinguish, alter, modify, or change in whole or in part any penalty, forfeiture, or liability, either civil or criminal, which shall have been incurred under such provision, and each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings, and prosecutions for the enforcement of the penalty, forfeiture, or liability, as well as for the purpose of sustaining any judgment, decree, or order which can or may be rendered, entered, or made in such actions, suits, proceedings, or prosecutions.

Section 11. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

Section 12. The City Council herewith finds, determines and declares that this ordinance is genuinely and urgently necessary for the immediate preservation of the public

health, safety, and welfare because the COVID-19 Pandemic has presented an urgent need to ensure and provide for the promotion of health and the suppression of disease by preventing the spread of the virus within the City.

INTRODUCED, READ, PASSED AND ADOPTED AS AN EMERGENCY ORDINANCE BY TWO-THIRDS OF THE ENTIRE CITY COUNCIL, AND ORDERED PUBLISHED this 6th day of April, 2021.



Ashley Stolzmann, Mayor

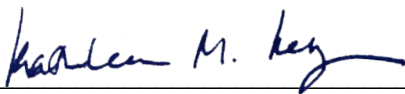
ATTEST:



Meredyth Muth, City Clerk



APPROVED AS TO FORM:



Kelly PC, City Attorney