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EMERGENCY ORDINANCE NO. 20-

AN EMERGENCY ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF ESCAMBIA COUNTY, FLORIDA; PROVIDING FOR INCORPORATION OF RECITALS AS LEGISLATIVE FINDINGS; PROVIDING FOR DEFINITIONS; PROVIDING FOR MANDATORY REQUIREMENTS FOR FACE COVERINGS; PROVIDING FOR PENALTIES AND ENFORCEMENT; PROVIDING FOR APPLICABILITY AND CONFLICT; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners (“Board”) finds that COVID-19 presents a danger to the health, safety, and welfare of the public; and

WHEREAS, COVID-19 is spread through airborne transmission from individuals sneezing, speaking, and coughing, and infectious droplet nuclei can spread for a great distance, although how far is not fully understood at present; and

WHEREAS, since March of 2020, the Board has proactively directed the implementation of numerous efforts, including a recent communications campaign, “Mask up Escambia” to encourage persons in the County to practice social distancing, wash and sanitize their hands, and wear face coverings as community mitigation strategies to increase containment of COVID-19; and

WHEREAS, Governor DeSantis has issued a series of executive orders to reopen Florida, and some of the restrictions to flatten the curve and slow the spread of COVID-19 have correspondingly been relaxed; and

WHEREAS, the reopening of the State has led to more contact between individuals and the increased community spread of the disease; and

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

WHEREAS, national chains, such as Walmart, Sam’s Club, and Starbucks, and others, require customers at all its stores nationwide to wear masks; and

WHEREAS, despite the mitigation efforts, as reported by Florida Department of Health (“DOH”), the number of positive cases of COVID-19 in the County has spiked with 6,461 positive cases reported as of July 23, 2020 compared to one month ago on June 23, 2020 when the County had 1,244 positive cases of COVID-19. On June 23, one month ago today, Escambia County had a total of 32 COVID-19 patients in our three area hospitals. As of today, July 23, 2020 Escambia’s three area hospitals are treating 231 patients. This dramatic increase in both

46 new cases of infections and new hospitalizations indicates a greater local community spread and
47 transmission of the disease; and
48

49 **WHEREAS**, federal and state health officials have indicated that they expect additional
50 cases of COVID-19 to be identified in the coming days and, based on the highly contagious
51 nature of COVID-19, additional person-to-person transmission is likely; and
52

53 **WHEREAS**, conditions presented by the threat of COVID-19 continue to pose a threat to
54 the public health that requires dynamic emergency response, including the imposition of
55 additional mitigation strategies as conditions require; and
56

57 **WHEREAS**, the use of face coverings has been identified as a measure to assist in
58 preventing individuals who may be shedding COVID-19 from spreading it to other individuals;
59 and
60

61 **WHEREAS**, to reduce the spread of the disease, the Centers for Disease Control
62 (“CDC”) recommends the use of cloth face coverings in public settings where other social
63 distancing measures are difficult to maintain, such as grocery stores and pharmacies, since many
64 individuals with no symptoms can spread the virus, and even individuals who develop symptoms
65 can transmit the virus to others before showing symptoms; and
66

67 **WHEREAS**, Florida Medical Association President Ronald L. Giffler, MD, JD, MBA,
68 has issued a statement urging Floridians to use face coverings to prevent the further spread of
69 COVID-19, and further calling on local officials to adopt regulations requiring the use of masks
70 of public places, specifically stating “[t]he science is clear. Asymptomatic infected individuals
71 can release aerosol particles while breathing and speaking. Not wearing a mask or face covering
72 increases exposure, whereas universal masking greatly reduces the spread of viral particles. The
73 message is simple: For the sake of your health and health of everyone around you, Florida’s
74 doctors want you to wear a mask.”; and
75

76 **WHEREAS**, on June 22, 2020, State Surgeon General Scott Rivkees issued an additional
77 public health advisory recommending people wear face coverings in any setting where social
78 distancing is not possible, stating that “all individuals [should] refrain from participation in social
79 or recreational gatherings of more than 50 people” and in smaller crowds “practice social
80 distancing by maintaining a distance of at least six feet from each other and wear a face
81 covering.”; and
82

83 **WHEREAS**, the CDC recommends only simple cloth face coverings for the general
84 population and not surgical masks or N-95 respirators because these are critical supplies that
85 must continue to be reserved for healthcare workers and other medical first responders; and
86

87 **WHEREAS**, cloth face coverings are relatively inexpensive and readily available as the
88 CDC states that they can be made from household items and provides online guidance for
89 making “do-it-yourself” coverings for people who cannot or do not want to buy one from the
90 increasing sources producing and selling coverings; and
91

92 **WHEREAS**, the CDC does not recommend wearing a cloth face covering for children
93 under the age of 2, or anyone who has trouble breathing, or is unconscious, incapacitated, or
94 otherwise unable to remove a mask without assistance; and
95

96 **WHEREAS**, adopting face covering requirements via ordinance, as opposed to local
97 emergency powers, would permit enforcement through civil citations and fines instead of
98 criminal prosecution as a second-degree misdemeanor; and
99

100 **WHEREAS**, similar ordinances have been adopted by other counties throughout the
101 State and on July 10, 2020, the Circuit Court in Leon County rejected a challenge to the
102 constitutionality of a Leon County ordinance that requires people to wear face masks in
103 businesses to try to prevent the spread of the virus; and
104

105 **WHEREAS**, the Board has determined that an emergency exists, and the immediate
106 enactment of this Emergency Ordinance is necessary as authorized in section 125.66(3), Florida
107 Statutes; and
108

109 **WHEREAS**, the Board finds implementation of this Emergency Ordinance is necessary
110 for the preservation of the health, safety and welfare of the community.
111

112 **NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY**
113 **COMMISSINERS OF ESCAMBIA COUNTY, FLORIDA:**
114

115 Section 1. Recitals. The above recitals are true and incorporated into this Emergency Ordinance
116 as if set forth in their entirety and constitute the legislative findings of the Board.
117

118 Section 2. Definitions.
119

120 (i) “Face Covering” is a material that covers the nose and mouth and that fits snugly against
121 the sides of the face so there are no gaps. It can be secured to the head with ties or straps
122 or simply wrapped around the lower face. It can be made of a variety of materials, such
123 as cotton, silk, or linen. Coverings with materials made of multiple layers is highly
124 encouraged. A cloth face covering may be factory-made or sewn by hand, or the cloth
125 face covering can be improvised from household items. The CDC has posted additional
126 information regarding how to make, wear, and wash a cloth face covering at
127 [https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/about-face-](https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/about-face-coverings.html)
128 [coverings.html](https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/about-face-coverings.html).
129

130 (ii) “Business establishment” means a location with a roof overhead under which any
131 business is conducted, goods are made or stored or processed or where services are
132 rendered. The term “business establishment” includes transportation network companies,
133 such as Ubers and Lyft, vehicles operated for mass transit, taxis, jitneys, limousines for
134 hire, rental cars, and other passenger vehicles for hire. The term “business
135 establishment” includes locations where non-profit, governmental, or quasi-governmental
136 entities facilitate public interactions and conduct business. The term “business
137 establishment” also includes places of worship.

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(iii)“Lodging establishment” shall have the same meaning as the term “transient public lodging establishment” has in section 509.013(4)(a)1, Florida Statutes (2019). Accordingly, for purposes of this Emergency Ordinance, a “lodging establishment” means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.

Section 3. Mandatory Requirements.

- (i) An individual in a business establishment must wear a face covering while in that business establishment.
- (ii) The requirement in this section does not apply to:
 - a. A child under the age of 6.
 - b. Persons prohibited from wearing face coverings by Federal or State safety or health regulations. It is the intent of this provision that those individuals who cannot tolerate a facial covering for a medical, sensory or any other condition which makes it difficult for them to utilize a face covering and function in public are not required to wear one.
 - c. Public safety, fire, and other life safety and health care personnel, as their personal protective equipment requirements will be governed by their respective agencies.
 - d. Persons exercising while observing at least 6 feet of distancing from another person.
 - e. Restaurant and bar patrons while eating or drinking. It is the intent of this provision that a face covering will be worn while traversing a business establishment for ingress or egress, to use the facilities, and while otherwise standing when persons are unable to maintain at least 6 feet of distancing.
 - f. Business owners, managers, and employees who are in an area of a business establishment that is not open to customers, patrons, or the public, provided that 6 feet of distance exists between persons. This exception does not apply to employees who are present in the kitchen or other food and beverage preparation area of a business establishment.
 - g. An individual in a lodging establishment who is inside of the lodging unit, including, but not limited to, a hotel room, motel room, vacation rental unit, timeshare unit, or similar unit.

184 (iii) Every business establishment is required to post signage notifying all persons of the
185 requirement to wear a face covering as provided in this section.
186

187 (iv) Nothing herein shall require or allow a person to wear a face covering to conceal the
188 identity of the wearer in violation of Chapter 876, Florida Statutes.
189

190 Section 4. Penalties and Enforcement.

191
192 (i) A violation of this Emergency Ordinance is a noncriminal infraction. A violation of this
193 Emergency Ordinance does not authorize the search or arrest of an individual. Prior to
194 the issuance of a citation, the individual will be asked to comply with the Emergency
195 Ordinance. Failure to comply with the requirements of this Emergency Ordinance
196 presents a serious threat to the public health, safety, and welfare, and a citation may be
197 issued for such a violation after the inquiry referenced above.
198

199 (ii) The penalty for a violation of this Emergency Ordinance is:

- 200 a. For a first offense, a fine of \$50.00
- 201 b. For a second offense, a fine of \$100.00
- 202 c. For a third and each subsequent offense, a fine of \$250.00
- 203 d. All other remedies available at law or equity, including injunction, remain
204 available to the County, even after issuance of a citation.
205
206

207 Section 5. Applicability and Conflict. This Emergency Ordinance shall apply in the
208 unincorporated areas of Escambia County.
209

210 Section 6. Severability. If any section, subsection, clause, or other part of this Emergency
211 Ordinance are deemed unlawful in any court of law competent to decide such matters, said
212 section, subsection, clause, or other part shall be severed and held as a separate provision and
213 shall have no effect on the remainder.
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221 [THIS AREA IS LEFT BLANK INTENTIONALLY]
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230 Section 7. Effective Date. This Emergency Ordinance shall be effective as provided by law.

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232 **PASSED AND DULY ADOPTED** by [supermajority or unanimous] vote of the Board
233 of County Commissioners during a duly declared local state of emergency due to the COVID-19
234 pandemic, on this ____ day of _____, 2020.

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239 BOARD OF COUNTY COMMISSIONERS
240 OF ESCAMBIA COUNTY, FLORIDA

241 ATTEST:

242
243
244 _____
245 Clerk

246 _____
247 Steven Barry, Chairman

248 APPROVED AS TO FORM:

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250
251 _____
252 County Attorney

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259 Commissioner Jeff Bergosh, District 1
260 Commissioner Douglas B. Underhill, District 2
261 Commissioner Lumon J. May, District 3
262 Commissioner Robert D. Bender, District 4
263 Commissioner Steven Barry, District 5

____ Yes ____ No
____ Yes ____ No
____ Yes ____ No
____ Yes ____ No
____ Yes ____ No