

COMMITTEE OF THE WHOLE AMENDMENT 1

AN EMERGENCY ORDINANCE OF THE MACON-BIBB COUNTY COMMISSION REQUIRING THE USE OF FACE COVERINGS IN PUBLIC IN RESPONSE TO THE COVID-19 PANDEMIC; AND FOR OTHER LAWFUL PURPOSES.

Purpose: To set face covering requirements for the public in the conduct of individuals and organizations during the COVID-19 pandemic.

WHEREAS, on March 11, 2020, the World Health Organization declared that the COVID-19 disease is a global pandemic, in response to over 118,000 cases present in over 110 countries globally; and

WHEREAS, on March 13, 2020, President Donald Trump declared a national emergency, and pledged the “full power of the federal government” to fight this pandemic; and

WHEREAS, on March 14, 2020, Governor Brian Kemp declared a public health emergency for the purpose of easing restrictions that might otherwise hinder the ability of public health systems to respond appropriately to the COVID-19 pandemic; and

WHEREAS, as of July 16, 2020, the World Health Organization (“WHO”) reports that there have been over 13.5 Million confirmed cases of COVID-19 globally, including over 580,000 deaths; and

WHEREAS, as of July 16, 2020, the United States Centers for Disease Control and Prevention (“CDC”) reports that there have been over 3.5 Million confirmed cases of COVID-19 in the United States, with over 137,000 deaths, or approximately one-quarter of all cases and deaths globally, and is nearly double the number of cases present in any other country; and

WHEREAS, as of July 16, 2020, the Georgia Department of Public Health reports that, in the State of Georgia, there have been over 131,000 confirmed cases of COVID-19, including over 3,100 deaths; and

WHEREAS, under Article 9, § 2, para. II for the Georgia Constitution, and O.C.G.A. § 36-35-3, as well as under Section 2(c) of the Macon-Bibb County Charter, the Macon-Bibb County government has a general police power to take those actions which are “necessary and proper to promote or protect the safety, health, peace, security, and general welfare of said government and its inhabitants”; and

WHEREAS, the CDC has issued guidance, available at www.cdc.gov/coronavirus, which advises that there currently is no vaccine for this virus, and that the best way to stay safe and limit the spread of the virus is for all individuals to take proactive measures to avoid getting or spreading the virus; and

WHEREAS, on July 15, 2020, Governor Kemp issued Executive Order 07.15.20.01, which “strongly encouraged” “all residents and visitors to the State of Georgia . . . to wear face coverings as practicable while outside their homes or place of residence, except when eating, drinking, or exercising outdoors”; and

WHEREAS, Executive Order 07.15.20.01 further provided that, “pursuant to Code Section 38-3-28, other than orders issued pursuant to the authority of Code Section 38-3-60 et seq., any state, county, or municipal law, order, ordinance, rule, or regulation that requires persons to wear face coverings, masks, face shields, or any other Personal Protective Equipment while in places of public accommodation or on public property are suspended to the extent that they are more restrictive than this Executive Order.”; and

WHEREAS, Executive Order 07.15.20.01 further provided for the regulation of various businesses, expressed in both mandatory and permissive terms, with vague terminology and broad exceptions to many such permissive terms, to wit:

1. Requiring individuals with certain medical conditions to shelter in place, except when “conducting or participating in Essential Services”; “Performing Necessary Travel”; “engaging in gainful employment”; or “working in Critical Infrastructure.” (p. 6);
2. Imposing requirements on restaurants that apply “where possible,” “wherever practicable,” “where practical,” or at “minimum levels”; (pp. 8-10);
3. Requiring that Critical Infrastructure operations and Food Establishments “*shall* implement measures,” but failing to identify discrete requirements, and instead listing nineteen itemized measures that “may” be adopted; (pp. 11-14);
4. Requiring that business operations other than Critical Infrastructure, Fitness Centers, personal care service providers, theaters and cinemas, bowling alleys, bars, amusement ride operators, schools, childcare centers, summer camps, live performance venues, and conventions “*shall* implement measures,” which, “*shall* include” all items in a list of preventative measures, several of which are qualified by phrases such as “as appropriate,” “regularly,” “at appropriate places,” “as practicable,” “encouraging,” “discouraging,” “limiting,” “unnecessary,” “frequently,” “should,” “reducing,” or “enhancing”; (pp. 12-29, 33-36, 38-39);
5. Providing that, “That any person, service, or entity delivering healthcare during the effective dates of this Order shall adhere to the guidelines listed in Section V for Critical Infrastructure,” which guidelines contain no mandatory requirements; (p. 23);
6. Imposing an ambitious requirement that, “That *to the extent possible*, hospitals, health care institutions, medical facilities, nursing homes, and other long-term care facilities *should* offer in-room dining.” (emphasis added) (p. 23); and
7. Requiring that professional, collegiate, and high school teams and organization “*shall*” operate according to the rules or guidelines that have been promulgated by the league, conference, or association governing the sport, but failing to identify or require the promulgation of any discrete requirements; (p. 37); and

WHEREAS, Executive Order 07.15.20.01 further provided that, “pursuant to Code Section 38-3-7, any person who violates this Order shall be guilty of a misdemeanor. Officials enforcing this Order should take reasonable steps to provide notice prior to issuing a citation or making an arrest. No provision of this Order shall limit the ability of law enforcement officers to enforce the laws of this State. Particularly, the provisions of Code Section 38-3-4 remain in effect,

and all law enforcement is authorized to enforce the Orders issued pursuant to Title 38, Chapter 3.”; and

WHEREAS, Executive Order 07.15.20.01 further provided that, “any law enforcement officer, after providing reasonable notice and issuing at least two citations for violations of Code Section 38-3-7, is authorized to mandate the closure of any business, establishment, corporation, non-profit corporation, or organization not in compliance with this Order for a period not to extend beyond the term of this Order.”; and

WHEREAS, by the plain terms of Executive Order 07.15.20.01, its provisions purport to be entirely legally enforceable, notwithstanding the fact that large sections of this order are written using permissive or imploratory language, including the requirement “strongly encouraging” all residents and visitors in the State of Georgia to wear face coverings; and

WHEREAS, O.C.G.A. § 38-3-28(a) provides that, “The political subdivisions of the state and other agencies designated or appointed by the Governor are authorized and empowered to make, amend, and rescind such orders, rules, and regulations as may be necessary for emergency management purposes and to supplement the carrying out of Articles 1 through 3 of this chapter, but *not inconsistent* with any orders, rules, or regulations promulgated by the Governor or by any state agency exercising a power delegated to it by him.” (emphasis added); and

WHEREAS, Section 19(e)(1) of the Macon-Bibb County Charter provides,

To meet a public emergency affecting life, health, property, or public peace, the commission may convene on call of the mayor, the mayor pro tempore, or a majority of all commissioners and promptly adopt an emergency ordinance, but this ordinance may not levy taxes; grant, renew, or extend a franchise; regulate the rate charged by any public utility for its services; or authorize the borrowing of money except for loans to be repaid within 30 days. An emergency ordinance shall be introduced in the form prescribed for ordinances generally, except that it shall be plainly designated as an emergency ordinance and shall contain, after the enacting clause, a declaration stating that an emergency exists and describing it in clear and specific terms. An emergency ordinance may be adopted with or without amendment or rejected at the meeting at which it is introduced. It shall become effective upon adoption and approval or at any later time as it may specify. *Every emergency ordinance shall automatically stand repealed 30 days following the date upon which it was adopted, but this shall not prevent reenactment of the ordinance in the manner specified in this section if the emergency still exists.* An emergency ordinance may also be repealed by adoption of a repealing ordinance in the same manner specified in this section for adoption of emergency ordinances.

(emphasis added); and

WHEREAS, on July 2 and 3, 2020, Governor Kemp undertook a tour of six cities across Georgia to encourage and promote the use of facemasks by members of the public; and

WHEREAS, the recent increase in COVID-19 cases coupled with other health cases that have to be dealt with have put a strain on our healthcare system; and

WHEREAS, our frontline public safety and healthcare employees are unable to adequately social distance from the public as they respond to calls and protect our community; and

WHEREAS, due to the recent spike in confirmed cases and the uncertainty of the next few weeks, public schools have delayed the start of the new school year by several weeks, and are waiting to determine how children will attend; and

WHEREAS, to protect the health of County employees by providing for social distancing from each other and the public, Macon-Bibb County is implementing alternate work schedules and other protective measures in public buildings, where practical; and

WHEREAS, We, as a community, must do what we can to protect our health and the health of those around us by working together and taking multiple preventative measures to slow the spread of COVID-19; and

WHEREAS, the action of each person in Macon-Bibb County is needed to reduce the strain on our healthcare system, allow the schools to make decisions about educating our children, and allow our public services to return to full strength; and

WHEREAS, every person in Macon-Bibb County shares the responsibility of protecting our fellow citizens, including our law enforcement officers, firefighters, emergency medical technicians, healthcare workers, 911 operators, and more, so that the community can remain healthy and able to take care of any residents who fall ill; and

WHEREAS, the Macon-Bibb County Commission finds that this ordinance is necessary and proper to promote or protect the safety, health, peace, security, and general welfare of Macon-Bibb County and its inhabitants;

NOW, THEREFORE, BE IT ORDAINED by the Macon-Bibb County Commission and it is hereby so ordained by the authority of the same that:

Section 1.

Pursuant to Section 19(e)(1) of the Macon-Bibb County Charter, the Macon-Bibb County Commission hereby declares that an emergency exists in Macon-Bibb County with respect to the COVID-19 pandemic.

Section 2.

For purposes of this Ordinance, the term “face covering” shall mean a device that is designed to be worn and is actually being worn over the nose and mouth of a person to impede the spread of saliva or other fluids during speaking, coughing, sneezing, or other act of expiration, expectoration, or expulsion from the mouth or nose, whether intentional, or involuntary. Such device shall not be required to be of a grade suitable for the practice of medicine or for respiration in high-dust or hazardous vapor environments, but shall be deemed sufficient if made from paper, fabric, cloth, scarves, bandanas, plastic, or other materials in such a way as to be capable of effectively impeding the spread of saliva and other fluids as described herein.

Section 3.

All residents and visitors to Macon-Bibb County are hereby ORDERED to wear a face covering over both the nose and mouth at all times while as practicable while outside their homes or places of residence.

Section 4.

For purposes of this Ordinance, it shall be considered to be “practicable” for all persons to wear a face covering:

1. When visiting any commercial establishment, government office, or other enclosed location in which persons not residing in the same household or place of residence are present at the same time; and
2. When working at any commercial establishment, government office, or other enclosed location in which persons not residing in the same household or place of residence are within six feet or are moving in such a way that they may readily pass within six feet;
3. At any other place within the territorial limits of Macon-Bibb County outside of such person’s household or other place of residence, the curtilage thereof, or personal vehicle.

Section 5.

Notwithstanding the requirements imposed elsewhere in this Ordinance, it shall be considered to be “impracticable” for any person to wear a face covering:

1. If that person is under the age of 10 years;
2. In a personal vehicle or other enclosed space occupied only by persons who live in the same household or place of residence as such person;
3. When exercising outdoors;
4. When eating, drinking, or smoking;
5. When wearing a face covering materially causes or aggravates a health condition; or
6. When wearing a face covering would prevent the receipt of personal services, such as medical, dental, or care services.

Section 6.

Violations of this Ordinance may be enforced by a notice of ordinance violation issued by any authorized law enforcement official as provided below:

1. A person who fails to comply with this Ordinance shall not be punishable by imprisonment but shall be punishable by a civil fine of not more than \$25.00 on the first offense, not more than \$50 on the second offense, and not more than \$100 on the third offense and any subsequent offenses.

2. A person who has control, authority, or the ability to direct or control the personnel working at any place of business or to enforce face covering requirements imposed on members of the public while within such place of business, and who suffers or permits any such personnel or member of the public to remain on the premises while in violation of this Ordinance shall not be punishable by imprisonment but shall be punishable by a civil fine of not more than \$25.00 on the first offense, not more than \$50 on the second offense, and not more than \$100 on the third offense and any subsequent offenses. This provision shall be applicable to any person who has the authority to refuse admittance or service to any member of the public, or to direct the conduct of any employee, regardless of job title.

3. A notice of violation may be served by delivery into the hands of the suspected violator.

4. Violators may respond to a notice of ordinance violation either by signing the notice and returning the notice along with payment of the fine indicated thereon to the Municipal Court of Macon-Bibb County by the date indicated on the notice or by appearing in the Municipal Court to plead no liability to the charged violation at the date and time provided on the notice. As a violation of this Ordinance shall be deemed civil in nature, the government shall bear the burden to prove, by a preponderance of the evidence, that a defendant violated this ordinance. No proceedings for contempt or arrest shall be initiated for failure to appear on the return date on the notice.

5. Violators who fail to respond—by payment of the civil fine, entry of a "no liability" plea, or other mechanism as may be deemed appropriate by the Judge of the Municipal Court—to a notice of ordinance violation as provided for in paragraph 4 above may thereafter be served personally with an ordinance violation citation or accusation, and criminally prosecuted pursuant to section 1-6 of the Macon-Bibb County Code of Ordinances.

6. The foregoing notwithstanding every effort shall be made to bring an individual into voluntary compliance with the terms of this Ordinance prior to issuance of any Notice of Violation.

7. Nothing in this Ordinance shall be interpreted as limiting or discouraging the enforcement of Executive Order 07.15.20.01, or any subsequent executive order, according to its terms.

8. Notwithstanding the provisions in this Ordinance, the requirement to wear a face covering shall not apply to persons who are within religious establishments, provided, however, that all such persons are strongly encouraged to wear face coverings.

Section 7.

The preamble of this Ordinance shall be considered to be and is hereby incorporated by reference as if fully set out herein.

Section 8.

(a) It is hereby declared to be the intention of the Macon-Bibb County Commission that all sections, paragraphs, sentences, clauses, and phrases of this Ordinance are and were, upon their enactment, believed by the Macon-Bibb County Commission to be fully valid, enforceable, and constitutional.

(b) It is hereby declared to be the intention of the Macon-Bibb County Commission that, to the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this Ordinance is severable from every other section, paragraph, sentence, clause or phrase of this Ordinance. It is hereby further declared to be the intention of the Macon-Bibb County Commission that, to the greatest extent allowed by law, no section, paragraph, sentence, clause or phrase of this Ordinance is mutually dependent upon any other section, paragraph, sentence, clause or phrase of this Ordinance.

(c) In the event that any phrase, clause, sentence, paragraph or section of this Ordinance shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of the Macon-Bibb County Commission that such invalidity, unconstitutionality or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any of the remaining phrases, clauses, sentences, paragraphs or sections of the Ordinance and that, to the greatest extent allowed by law, all remaining phrases, clauses, sentences, paragraphs, and sections of the Ordinance shall remain valid, constitutional, enforceable, and of full force and effect.

Section 9.

All Ordinances or parts of Ordinances in conflict with this Ordinance are, to the extent of such conflict, hereby repealed or set aside. This Ordinance shall be considered to be entirely separate from that Ordinance being proposed as Committee of the Whole Amendment 2 to the Ordinance styled, "AN ORDINANCE OF THE MACON-BIBB COUNTY COMMISSION SETTING EXPECTATIONS FOR THE PUBLIC RESPONSE TO COVID-19, AND APPROPRIATING UP TO \$700,000.00 FROM FUND BALANCE FOR A PUBLIC AWARENESS CAMPAIGN, AS SPECIFIED HEREIN; AND FOR OTHER LAWFUL PURPOSES." being considered at the same time as this Ordinance, and the adoption of or failure to adopt either Ordinance shall neither cause the repealer of nor otherwise affect the implementation of the other Ordinance.

Section 10.

In the event scrivener's errors shall be discovered in this Ordinance or in any Exhibits hereto after the adoption hereof, the Commission hereby authorizes and directs that each such scrivener's error shall be corrected in all multiple counterparts of this Ordinance.

Section 11.

The Macon-Bibb County Commission grants the Mayor the authority to take any and all further actions necessary to carry out the intents and purposes of this Ordinance.

Section 12.

This Ordinance shall become effective upon its approval by the Mayor or its adoption into law without such approval. This Ordinance shall automatically stand repealed 30 days following the date upon which it was adopted, but may be reenacted and extended for an additional 30 days prior to the date of repealer if the emergency set forth herein still exists.

SO ORDERED AND ORDAINED this _____ day of _____, 2020.

ROBERT A.B. REICHERT, MAYOR

ATTEST: _____
JANICE ROSS, CLERK OF COMMISSION