

DATE 7-2, 2020

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ATTACH-
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REVIEWED BY
PREPARED BY

[Redacted]

[Redacted]

CITY ATTORNEYS OFFICE

**AN EMERGENCY ORDINANCE TO REQUIRE INDIVIDUALS
TO WEAR FACE COVERINGS IN CERTAIN CIRCUMSTANCES
IN THE CITY OF ROCK HILL TO REDUCE RISK OF EXPOSURE
TO COVID-19 DURING THE PUBLIC HEALTH EMERGENCY,
AND MATTERS RELATED THERETO**

WHEREAS, the 2019 Novel Coronavirus ("COVID-19") is a respiratory disease that can result in serious illness or death by the SARS-CoV-2 virus, which is a new strain of coronavirus previously unidentified in humans and which can spread from person to person; *and*

WHEREAS, the World Health Organization declared COVID-19 a Public Health Emergency of International Concern on January 30, 2020; *and*

WHEREAS, the Centers for Disease Control and Prevention (the "CDC") has warned of the high public health threat posed by COVID-19 globally and in the United States; *and*

WHEREAS, on January 31, 2020, the United States Department of Health and Human Services Secretary declared a public health emergency in the United States for COVID-19 under Section 391 of the Public Health Service Act; *and*

WHEREAS, on March 13, 2020, the President of the United States declared that the COVID-19 outbreak in the United States constitutes a national emergency, which began on March 1, 2020; *and*

WHEREAS, also on March 13, 2020, the Governor of the State of South Carolina (the "State") issued Executive Order 2020-08, declaring a State of Emergency based on a determination that COVID-19 poses an actual or imminent public health emergency for the State; *and*

WHEREAS, the Governor of the State has subsequently declared a continued State of Emergency in Executive Orders 2020-15 (March 28), 2020-23 (April 12), 2020-29 (April 27), 2020-35 (May 12), 2020-38 (May 27), and 2020-40 (June 11); *and*

WHEREAS, the State is experiencing a dramatic increase in the number of identified new COVID-19 cases and, as of June 30, 2020, the South Carolina Department of Health and Environmental

Control ("DHEC") is reporting that there have been, in the State, 36,297 confirmed COVID-19 cases and 735 confirmed COVID-19 deaths; and

WHEREAS, because of the impact of the spread of the COVID-19 virus, many businesses may have suffered significant losses, unemployment numbers have increased, and indicators show a possible sustained economic downturn; and

WHEREAS, the number of COVID-19 cases is growing rapidly, and as the numbers continue to increase in the State and in the City of Rock Hill (the "City"), the demand for medical, pharmaceutical, personal, and general cleaning supplies may overwhelm sources of supply; the private and public sector work force may be negatively impacted by absenteeism; and the demand for medical facilities may exceed locally available resources; and

WHEREAS, health authorities, including the CDC, the Surgeon General of the United States, and DHEC, emphasize that the virus which causes COVID-19 is spread through person-to-person contact, and have urged the practice of social distancing and use of face coverings as a means of preventing its spread; and

WHEREAS, the City recognizes that its citizens and business owners desire, and that it is in the community's best economic interest, for businesses to remain open during the COVID-19 pandemic; and

WHEREAS, S.C. Code § 5-7-250(d) provides that "[t]o meet public emergencies affecting life, health, safety or the property of the people, council may adopt emergency ordinances ... by the affirmative vote of at least two-thirds of the members of council present. An emergency ordinance is effective immediately upon its enactment without regard to any reading, publication requirements, public hearing, or public notice requirements. Emergency ordinances shall expire automatically as of the sixty-first day following the date of enactment"; and

WHEREAS, the City Council has determined, based on the recommendations of public health experts and responsive to a serious threat to the public health, safety, and welfare of the citizens of the City, that it would serve the public interest, improve the overall health and safety of the citizens, and be within the City's police powers under Home Rule and S.C. Code § 5-7-60 to require that individuals wear face coverings in situations of face-to-face interactions and where social

distancing is difficult to maintain as the least intrusive and most effective means to reduce the spread of COVID-19; and

WHEREAS, the Council desires and intends to work with the business community to develop marketing strategies and signage; facilitate mask availability; and educate the public on the requirements of this Ordinance; and

WHEREAS, the Council wishes to protect businesses which cater to the public from claims of unlawful refusal to provide goods and or services in violation of the Interstate Commerce Clause of the United States Constitution, when such refusal actually stems from an individual's objection to wearing a face covering while at the business establishment; and

WHEREAS, the South Carolina Attorney General, on June 25, 2020, issued a public statement that enacting local mask requirements is within the police power of municipalities and is not preempted by State law; and

WHEREAS, this Ordinance has been approved by at least two-thirds of the Councilmembers present at the meeting in which it was considered;

NOW, THEREFORE, be it ordained by the Governing Body of the City of Rock Hill, in Council assembled, as follows:

Section 1. Definitions. As used herein, the terms below shall have the following meanings:

"Establishment" means a Foodservice Establishment, Retail Establishment, or Service Establishment, as herein defined.

"Face Covering" means a uniform piece of cloth, fabric, or other material that securely covers a person's nose and mouth and remains affixed in place without the use of one's hands. Face Coverings include, but are not limited to, bandanas, medical masks, cloth masks, scarves, and gaiters, provided that they are worn such that they securely cover the individual's nose and mouth.

"Foodservice Establishment" means any establishment within the City that sells drinks and or prepared food on a dine-in, delivery, carry-out, or drive-through basis.

"Responsible Person," with respect to an Establishment, means any individual associated with the Establishment who

has the authority and ability to enforce the requirements of the Ordinance within the Establishment, such as an owner, manager, or supervisor. "Responsible Person" may also include an employee or other designee that is present at the Establishment but does not have the title of manager or supervisor, but who has the temporary or designated authority and ability to ensure that the requirements of this Ordinance are met while the Establishment is open to the public.

"Retail Establishment" means any retail establishment, business, organization, or facility open to the public within the City including, without limitation:

- a) grocery stores, convenience stores, and any other establishment engaged in the retail sale of non-prepared food;
- b) commercial stores engaged in the retail sale to the public of goods or services including, without limitation, sporting goods; furniture and home-furnishings; clothing, shoes, and clothing accessories; jewelry, luggage, and leather goods; department stores; hardware and home-improvement items; books, crafts, and music; florists and flowers; and all other items and supplies for household consumption or use;
- c) pharmacies and other stores that sell medications or medical supplies;
- d) alcoholic beverage stores and bars; and
- e) laundromats.

"Service Establishment" means those businesses which offer personal services including, without limitation, nail and hair salons, barber shops, massage parlors, and the like.

Section 2. Use of Face Coverings. Effective as of 12:01 a.m. on July 10, 2020:

- a) all members of the public are required to wear Face Coverings while inside the enclosed area of any Establishment or a building housing offices of the City government, or when using or driving public or commercial transportation;
- b) all Retail and Service Establishments shall require staff to wear, and those staff shall wear, Face Coverings while working in areas open to the general public and areas in which interactions with other staff are likely in which

social distancing of at least six feet cannot be observed; and

- c) all Foodservice Establishments shall require staff who interact with customers (including, without limitation, delivery personnel) to wear, and those staff shall wear, Face Coverings while working, even if making deliveries or delivering pick-up orders.

Section 3. Exemptions. Face Coverings shall not be required:

- a) (i) in outdoor or unenclosed areas appurtenant to Retail Establishments, and (ii) in Foodservice Establishments in which social distancing of at least six feet is possible and observed;

- b) for people whose religious beliefs prevent them from wearing a Face Covering;

- c) for those who cannot wear a Face Covering due to a medical or behavioral condition;

- d) for children under the age of ten years old, provided that adults accompanying children ages two through nine shall use reasonable efforts to cause those children to wear Face Coverings while inside the enclosed area of any Establishment;

- e) for patrons of Foodservice Establishments while they are dining and or drinking, subject to (a)(ii), above;

- f) in private, individual offices;

- g) when complying with directions of law enforcement officers;

- h) in settings where it is not practical or feasible to wear a Face Covering, including when swimming or obtaining services involving the head, face, or scalp, such as dental work, haircuts, or facials;

- i) while exclusively with members of a family or of the same household, and no person other than such family or household member is within the same enclosed area.

Section 4. Individual Violations; Civil Infraction.

- a) Any person, after first being warned, found violating the provisions of this Ordinance by failing to wear a Face Covering when required shall be deemed guilty of a civil infraction, and shall be subject to a fine of not less than \$25.00 nor more than \$100.00.

- b) A Responsible Person who, after first being warned, fails to comply with the provisions of this Ordinance shall be deemed guilty of a civil infraction, and shall be subject to a fine of not less than \$25.00 nor more than \$100.00.

- c) In addition to the fines established by this section, repeated violations of this Ordinance by a Responsible Person

may result in the suspension or revocation of any occupancy permit or business license issued to the person for the premises on which the violations occurred.

d) Violation of this Ordinance is hereby declared to be a public nuisance, which may be abated by the City by restraining order, preliminary and permanent injunction, or other means provided for by law, and the City may take action to recover the costs of the nuisance abatement. The foregoing notwithstanding, every effort shall be made to bring Establishments into voluntary compliance with the terms of this Ordinance prior to the commencement of any enforcement action.

e) Each day of a continuing violation of this Ordinance shall be considered a separate and distinct offense.

Section 5. Duties of Establishments and Responsible Persons.

Establishments and Responsible Persons shall have a duty to enforce the provisions of this Ordinance only against employees of the Establishment. Without limiting the generality of the foregoing, no Establishment or Responsible Person shall have any duty to require that customers, visitors, or other members of the general public wear Face Coverings.

Section 6. Suspension of Contrary Local Provisions. During the Emergency Term (as defined in hereinbelow), any ordinance, resolution, policy, or bylaw of the City that conflicts with the provisions hereof shall be and is hereby suspended and superseded.

Section 7. Expiration of Ordinance; Extension of Emergency Term.

As provided by S.C. Code § 5-7-250(d), this Ordinance shall be terminated by the issuance of another ordinance or shall expire automatically as of the sixty-first day following the date of enactment (the "Emergency Term"). Notwithstanding the foregoing, however, Council may extend the Emergency Term by emergency ordinance for one or more additional terms, each of no more than sixty days, provided that the total duration of the Emergency Term shall not exceed six months without enacting an ordinance in the ordinary course.

Section 8. Severability. Should any word, provision, section, paragraph, or sentence of this Ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining words, provisions, sections, paragraphs, or sentences of this Ordinance as hereby adopted shall remain in full force and effect.

DONE AND RATIFIED in Council assembled on this the ____ day
of _____, 2020.

John Pressly Gettys, Jr., Mayor

Kathy S. Pender, Mayor Pro Tempore

John A. Black, III, Councilmember

Nikita L. Jackson, Councilmember

Derrick L. Lindsay, Councilmember

James C. Reno, Jr., Councilmember

Kevin H. Sutton, Councilmember

ATTEST:

Anne P. Harty
Municipal Clerk