

## ORDINANCE NO. 20-11

### **An Emergency Ordinance of the City Council of the City of Whitefish, Montana, requiring the use of face coverings in public settings to help prevent the spread of COVID-19 and waiving a second reading.**

WHEREAS, coronaviruses are a large family of virus that cause illness ranging from the common cold to more serious issues, including death; and

WHEREAS, in late 2019, an outbreak of a new strain of coronavirus began in Wuhan, China; and

WHEREAS, on February 11, 2020, the World Health Organization named the new strain of coronavirus causing illness in China "COVID-19;" and

WHEREAS, according to the Center for Disease Control: "COVID-19 is thought to spread mainly through close contact from person-to-person in respiratory droplets from someone who is infected. People who are infected often have symptoms of illness. Some people without symptoms may be able to spread the virus."; and

WHEREAS, the Center for Disease Control has warned: "The virus that causes COVID-19 is spreading very easily and sustainably between people."; and

WHEREAS, on March 11, 2020, the World Health Organization declared a global pandemic due to the spread of COVID-19; and

WHEREAS, President Donald Trump, Governor Steve Bullock, the Flathead County Board of Commissioners, and Mayor John Muhlfeld have all declared states of emergency related to COVID-19; and

WHEREAS, on March 16 and April 5, 2020, the City adopted emergency Ordinance Nos. 20-04 and 20-05, enacting measures to reduce the spread of COVID-19; and

WHEREAS, on March 27, 2020, Governor Bullock issued a "stay at home" Directive; and

WHEREAS, on March 30, 2020, Governor Bullock issued a Directive requiring that individuals traveling to Montana from another state or country self-quarantine for 14 days; and

WHEREAS, on or about April 3, 2020, the Center for Disease Control recommended that individuals wear masks or cloth face coverings in public settings especially when other social distancing measures are difficult to maintain to prevent the spread of COVID-19; and

WHEREAS, the City has been strongly committed to following all recommendations from the federal, state, and county levels and instituted measures such as requiring sheltering-in-place, supporting the closure of schools, closing City Hall to the public, closing some City parks and recreational facilities, allowing or requiring City employees to work from home, closing lodging facilities, developing methods for extensive public outreach, and discouraging travel to the region; and

WHEREAS, the efforts of the State and City were successful in helping limit the spread of COVID-19 within our community; and

WHEREAS, on April 22, 2020, Governor Bullock issued a Directive for "Reopening the Big Sky" that provided for a phased re-opening of Montana and addressed the guidelines for Phase One; and

WHEREAS, Governor Bullock's April 22, 2020, Directive set forth the following guidelines for every Phase of the re-opening:

- Individuals should continue to practice good hygiene by adhering to the following guidelines:
  - Wash your hands with soap and water or use hand sanitizer, especially after touching frequently used items or surfaces.
  - Avoid touching your face.
  - Sneeze or cough into a tissue, or the inside of your elbow.
  - Disinfect frequently used items and surfaces as much as possible.
  - Strongly consider using non-medical face coverings while in public, especially in circumstances that do not readily allow for appropriate physical distancing (e.g., grocery/retail stores, pharmacies, public transportation).
- People who feel sick should stay at home.
  - Do not go to work or school.
  - Contact and follow the advice of your medical provider.
  - Follow local health department guidance on isolation and quarantine.
- Employers should:
  - Develop and implement appropriate policies, in accordance with federal, state, and local regulations and guidance, and informed by industry best practices, regarding:
    - Social distancing and protective equipment.
    - Temperature checks and/or symptom screening.
    - Testing, isolating, and contact tracing, in collaboration with public health authorities.
    - Sanitation.
    - Use and disinfection of common and high-traffic areas.
  - Monitor workforce for indicative symptoms. Do not allow people with symptoms of COVID-19 to work.
  - Collaborate with public health officials when implementing policies and procedures for workforce contact tracing following an employee's COVID-19 positive test result.

WHEREAS, on May 19, 2020, Governor Bullock issued a Directive moving the State into Phase Two of the re-opening which:

- Increased permissible group size to 50 individuals, provided social distancing can be accomplished.

- Allowed all businesses to operate, provided they adhere to physical distancing, the Phase Two Guidelines, all other Directives and guidance remaining in effect, and CDC sanitation protocols.
- Allowed restaurants, bars, breweries, distilleries, and casinos to remain in the same operational status as Phase One, but with an increase to 75 percent capacity.
- Allowed gyms, indoor group fitness classes, pools, and hot tubs to operate at 75 percent capacity if they adhere to strict physical distancing and exercise frequent sanitation protocols.
- Allowed concert halls, bowling alleys, and other places of assembly to operate with reduced capacity provided they adhere to physical distancing guidelines and follow CDC sanitation protocols.
- Allowed childcare facilities to increase capacity consistent with the guidelines contained in the Governor's previous Directive on childcare if physical distancing guidelines can be implemented and removed the 24-person cap per facility effective June 1.
- Directed employers to continue to permit telework as much as possible and where feasible.
- Directed senior living or assisted living facilities and outdoor recreation to continue to follow the guidelines of Phase One.

WHEREAS, Governor Bullock's May 19, 2020 Directive also lifted the 14-day quarantine requirement for travelers from other states and countries effective June 1, 2020; and

WHEREAS, it is estimated that in 2018 alone, the City welcomed between 500,000 and 1,250,000 visitors; and

WHEREAS, since Governor Bullock lifted the 14-day quarantine requirement for visitors from other states and countries, the City has experienced a significant influx of visitors, many of whom have traveled from areas with a high rate of COVID-19 infection; and

WHEREAS, the City recognizes that its citizens and business owners desire, and that it is in the best economic interests of the community, for its businesses to remain open; and

WHEREAS, since Phase Two of the re-opening, the State has experienced a marked increase in COVID-19 cases, with 67 cases, the highest number ever, being reported on July 1, 2020; and

WHEREAS, since Phase Two of the re-opening, Flathead County has experienced a marked increase in COVID-19 cases, with 28 new cases reported after four weeks of no new cases; and

WHEREAS, on or about June 5, 2020, the World Health Organization advised governments to encourage the public to wear masks or cloth face coverings to help prevent the spread of COVID-19; and

WHEREAS, evidence indicates that wearing masks or cloth face coverings reduces the transmissibility of COVID-19 by reducing transmission of infected droplets in both laboratory and clinical contexts; and

WHEREAS, on July 6, 2020, the City passed Resolution No. 20-18, which strongly encouraged residents, businesses, and visitors to use masks or cloth face coverings to reduce the spread of COVID-19; and

WHEREAS, Resolution No. 20-18 provided the City would pass an ordinance requiring the use of masks or cloth face coverings if residents, businesses, and visitors were not adhering to its recommendations; and

WHEREAS, the City remains committed to protecting its most vulnerable population, to ensuring that businesses remain open and financially viable, and to helping schools to re-open in the fall; and

WHEREAS, as a municipal corporation with its own governmental charter, the City is a self-governing unit that may exercise any power not prohibited by the Montana Constitution, state law or its own charter; and

WHEREAS, the City's power and authority are liberally construed, with every reasonable doubt as to the existence of a power or authority resolved in favor of the power or authority's existence; and

WHEREAS, the City possesses an inherent power to enact reasonable legislation for the health, safety, welfare, or morals of the public; and

WHEREAS, § 7-5-4104, MCA, authorizes the City to define and abate nuisances and impose fines upon persons guilty of creating or continuing a nuisance to exist on premises they occupy or control; and

WHEREAS, § 7-5-104, MCA, authorizes the City Council to waive the second reading of an ordinance passed in response to an emergency and provides such ordinance is effective upon passage; and

WHEREAS, an emergency ordinance requires a two-thirds vote of the whole City Council for passage and remains effective for no more than 90 days; and

WHEREAS, §§ 2-3-103 through 2-3-111, MCA, provide that public agencies must ensure that prior to a final agency decision is taken that is of significant interest to the public, adequate notice is given and the public is allowed a reasonable opportunity to participate; and

WHEREAS, § 2-3-112, MCA, provides §§ 2-3-103 through 2-3-111, MCA, do not apply to an agency decision that must be made to address an emergency situation affecting the public health, welfare, or safety; and

WHEREAS, COVID-19 constitutes an emergency situation affecting the public health, safety and general welfare and requiring the use of masks or face coverings in public settings in

accordance with federal and state guidance will help ensure the health and safety of the City's residents and visitors, will reduce the likelihood that the State will reinstate Directives closing businesses, and will limit the cascading impacts on critical services.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Whitefish, Montana, and its inhabitants, as follows:

Section 1: All the recitals set forth above are hereby adopted as Findings of Fact.

Section 2:

1. Definitions.

a. "Face Covering" means a covering made of cloth, fabric, or other soft material, without holes, that securely covers the nose and mouth and remains affixed without use of one's hands. Face coverings include, but are not limited to, bandanas, disposable masks, cloth masks, scarves, buffs, and gaiters provided they are worn such that they securely cover one's nose and mouth. The term does not include face shields.

b. "Place of Business" means any facility, building, or structure operated by or for a business engaged in the sale or other transaction of any kind for anything of value in exchange for goods, commodities, services, or lodging and that is open to the general public or by appointment and includes, but is not limited to, grocery stores, convenience stores, retail stores, office buildings, hospitals, clinics, restaurants and bars (including outdoor seating for such facilities but subject to the exclusion below), and hotels and motels (excluding within the rented room or suite).

2. Use of Face Coverings Required.

a. All Places of Business must require employees, contractors, volunteers, customers, and visitors to wear a Face Covering in areas open to the general public.

b. All Places of Business must require employees to wear Face Coverings in areas not open to the general public if social distancing of at least six feet cannot be maintained.

c. All individuals must wear a Face Covering when inside a Place of Business and when standing in line to enter any Place of Business.

d. All individuals must wear a Face Covering when riding on public transportation or when they are a driver or passenger in a taxi, private car service, shuttle, or transportation network company.

e. All individuals participating in organized outdoor gatherings of 20 or more must wear a Face Covering.

f. All individuals outdoors where social distancing is not possible must wear a Face Covering.

3. Exemptions. Face Coverings are not required:

a. For children under the age of twelve (12), provided that adults accompanying children ages two through eleven must use reasonable efforts to cause those children to wear Face Coverings while inside a Place of Business.

b. For any individual who cannot wear a Face Covering because of a medical condition, mental health condition or developmental disability or any individual who should not wear a Face Covering under the guidance of the Center for Disease Control. An individual is not required to provide medical documentation demonstrating that the individual cannot tolerate wearing a Face Covering.

c. For individuals who are seated at a table or the bar of a restaurant or a bar while such individuals are eating and/or drinking.

d. For individuals actively exercising or swimming.

e. For individuals working in a profession in which the use of a mask or Face Covering will not be compatible with the duties of the profession or present a safety risk.

f. For individuals while in their private, individual offices provided social distancing of at least six feet can be maintained.

g. For individuals fully separated from the public by a protective barrier. A plexiglass shield that provides only partial protection between the public and an employee does not negate the requirement to wear a Face Covering.

h. In settings where it is not practicable or feasible to wear a Face Covering, including complying with directions of law enforcement officers, or obtaining services involving the head, face, or scalp such as dental work, haircuts, and facials.

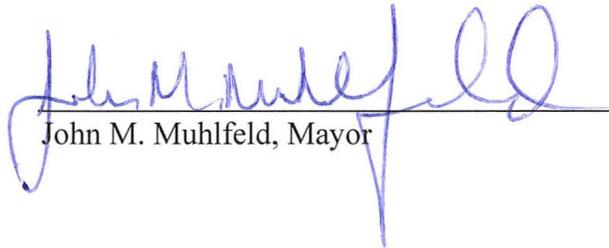
4. Penalties:

a. Any Place of Business that violates the provisions of this emergency ordinance will be deemed guilty of a municipal infraction and will be subject to the penalties set forth in section 1-4-4 of the City Code.

b. Violation of the provisions of this emergency ordinance by a Place of Business may result in the suspension or revocation of any business license issued for the premises on which the violations occurred.

- c. Violation of this emergency ordinance is hereby declared to be a public nuisance which may be abated by the City by restraining order, preliminary or permanent injunction, or other means provided by law and the City may take action to recover the costs of the nuisance abatement.
  - d. Each day of continuing violation of this emergency ordinance may be considered a separate and distinct offense.
5. Duties of Places of Business. Places of Business have the duty to: (1) enforce the provisions of this emergency ordinance within the premises of the Place of Business; and (2) provide Face Coverings for employees; and (3) post signage notifying its customers and patrons of the provisions of this emergency ordinance.
6. Most Restrictive Standard Controls. To the extent any state, federal or local regulations, laws or orders are more restrictive than this emergency ordinance, such regulations, laws, or orders apply.
7. Time Limitations. This emergency ordinance shall take effect at 12:01 a.m. on Wednesday, July 15, 2020. This emergency ordinance will remain in effect for one (1) month thereafter unless sooner repealed. The City Council may extend this emergency ordinance for one or more additional terms.
8. Severability. Should any word, provision, section, paragraph or sentence of this emergency ordinance be rendered or declared invalid by a court of competent jurisdiction or by reason of preemptive legislation, the remaining words, provisions, sections, paragraphs and sentences of this emergency ordinance as adopted shall remain in full force and effect.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF WHITEFISH, MONTANA, THIS 14TH DAY OF JULY 2020.

  
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John M. Muhlfeld, Mayor

ATTEST:

  
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Michelle Howke, City Clerk

## ADDENDUM TO EMERGENCY ORDINANCE

### WHITEFISH CITY CODE

#### **1-4-4: MUNICIPAL INFRACTIONS; PENALTIES:**

- A. A municipal infraction is a civil offense and for a proven violation, a civil penalty may be imposed.
  
- B. For a first violation, a civil penalty of not more than three hundred dollars (\$300.00) shall be imposed.
  
- C. For each repeat violation, a civil penalty not to exceed five hundred dollars (\$500.00) shall be imposed.
  
- D. Seeking a civil penalty as authorized in this chapter does not preclude the city from seeking alternative relief from the court in the same action; provided, however, that the city must elect whether to treat a specific incident as a municipal infraction, subject to the penalty set forth in this section, or as a misdemeanor, punishable as set forth in section 1-4-1 of this chapter. If a violation is repeated, the city may treat the initial violation as a municipal infraction, and the repeat violation as a misdemeanor, or vice versa. (Ord. 09-20, 10-19-2009)