

AN ORDINANCE FOR THE THIRTEENTH DECLARATION OF A LOCAL STATE OF EMERGENCY RELATED TO COVID-19; AND FOR OTHER PURPOSES.

WHEREAS, Athens-Clarke County, Georgia has experienced an event of critical significance as a result of the Coronavirus (COVID-19) disease (“COVID-19”); and

WHEREAS, the Centers for Disease Control and Prevention, (the “CDC”) indicates that COVID-19 is a new and contagious respiratory disease caused by a novel (new) coronavirus that was first detected in China and which has now been detected in more than 100 locations around the world, including in the United States; and

WHEREAS, COVID-19 is officially a global pandemic according to the WHO; and

WHEREAS, COVID-19 can spread from person to person, and can result in no symptoms, minor symptoms, or serious illness causing permanent organ damage and death; and

WHEREAS, individuals age 65 or over or living with certain medical conditions identified by the CDC (members of Vulnerable Populations) and members of other populations identified by the CDC (“Other Populations at Risk”) are at risk of severe and lasting harm to health or death from COVID-19; and

WHEREAS, COVID-19 also has been reported to cause severe and permanent damage to some children; and

WHEREAS, there is no vaccine or approved treatment for COVID-19; and

WHEREAS, the CDC has noted that COVID-19 spreads very easily and sustainably when an infected person (who may not exhibit symptoms at all, or only minor symptoms) talks, sneezes, or coughs in close proximity with others (within six feet); and

WHEREAS, on March 13, 2020, President Donald Trump declared a national emergency for the United States of America in response to COVID-19; and

WHEREAS, on March 14, 2020 Governor Brian Kemp declared a Public Health State of Emergency in Georgia and renewed his declaration on April 8, 2020, April 30, 2020, May 28, 2020, June 29, 2020, July 31, 2020, August 31, 2020, September 30, 2020, October 30, 2020, November 30, 2020, December 30, 2020 and again on January 29, 2021 so that it will remain in effect at least through Sunday, March 7, 2021; and

WHEREAS, on March 16, 2020, the Mayor and Commission of the Unified Government of Athens-Clarke County, Georgia adopted an Ordinance for the Declaration of Local State of Emergency related to COVID-19;

WHEREAS, on March 19, 2020, pursuant to their authority under the Athens-Clarke County Emergency Management Ordinance, the Athens-Clarke County Mayor and Commission adopted a Second Declaration of Local Emergency activating certain emergency powers in order to allow Athens-Clarke County to quickly respond to the COVID-19 pandemic and renewed that declaration on April 21, 2020, June 2, 2020, July 7, 2020, July 30, 2020, August 18, 2020, September 15, 2020, October 6, 2020, November 4, 2020, December 1, 2020, January 6, 2021 and again on January 29, 2021; and

WHEREAS, the Governor, through Executive Orders 04.30.20.01, 05.12.20.02, 05.28.20.02, 06.11.20.01, 06.29.20.02, 07.15.20.01, 08.15.20.01, 08.31.20.02, 09.30.20.02,

10.15.20.01, 10.30.20.02, 11.13.20.01, 12.30.20.02, 01.15.21.01, 01.29.21.02 has recognized the need to take extra precautions to protect certain vulnerable populations who meet the criteria for higher risk of severe illness as defined by the CDC and identified in Section III of the Governor's Executive Order 01.15.21.01 ("Vulnerable Populations"); and

WHEREAS, Executive Orders 04.30.20.01, 05.12.20.02, 05.28.20.02, 06.11.20.01, 06.29.20.02, 07.15.20.01, 08.15.20.01, 08.31.20.02, 09.30.20.02, 10.15.20.01, 10.30.20.02, 11.13.20.01, 12.30.20.02, 01.15.21.01, 01.29.21.02 required Vulnerable Populations to continue to shelter in place, with exceptions that include participating in essential services and working, through February 15, 2021; and

WHEREAS, the Mayor and Commission desire to protect individuals in said Vulnerable Populations and Other Populations at Risk in a reasonable manner and as recommended by the CDC and by the Georgia Department of Public Health, while such individuals are participating in essential services and working; and

WHEREAS, the CDC¹, Dr. Kathleen Toomey (Georgia's Commissioner of Public Health), and Governor Kemp through Executive Order 05.12.20.02, and subsequent Executive Orders, have recommended that individuals wear facial coverings over the nose and mouth to mitigate the spread of COVID-19 when they are in public places where they cannot practice social distancing (i.e., stay at least six feet away from other individuals who do not share the same household); and

WHEREAS, the CDC states that wearing a facial covering over the nose and mouth is a recommended precaution designed to prevent symptomatic and asymptomatic individuals who have contracted COVID-19 from spreading it to other individuals; and

WHEREAS, evidence from the South Carolina Department of Health and Environmental Control announced on August 12, 2020, that parts of the State of South Carolina under public mask-wearing mandates registered a 46.3% drop in coronavirus cases in the four weeks after they were introduced as compared to areas of the state which did not impose such mandates;

WHEREAS, evidence from data from the State of Alabama shows a 11% drop in

¹ CDC recommends wearing cloth face coverings in public settings where other social distancing measures are difficult to maintain (e.g., grocery stores and pharmacies), especially in areas of significant community-based transmission.

"In light of new data about how COVID-19 spreads, along with evidence of widespread COVID-19 illness in communities across the country, CDC recommends that people wear a cloth face covering to cover their nose and mouth in the community setting. This is to protect people around you if you are infected but do not have symptoms."

A cloth face covering should be worn whenever people are in a community setting, especially in situations where you may be near people. These settings include grocery stores and pharmacies. These face coverings are not a substitute for social distancing. Cloth face coverings are especially important to wear in public in areas of widespread COVID-19 illness.

Yes. Wearing cloth face coverings is an additional public health measure people should take to reduce the spread of COVID-19. CDC still recommends that you stay at least 6 feet away from other people (social distancing), frequent hand cleaning and other everyday preventive actions. A cloth face covering is not intended to protect the wearer, but it may prevent the spread of virus from the wearer to others. This would be especially important if someone is infected but does not have symptoms.

COVID-19 cases in the four weeks since the state's mandate went into effect; and

WHEREAS, according to a Vanderbilt University study, hospitals in the State of Tennessee where at least 75% of patients came from mask-mandate counties reported hospitalizations rising by only 30% since July 1, 2020, as compared to a rise of 200% in the same time period when 75% or more of patients came from counties without mask mandates in the State of Tennessee; and

WHEREAS, Dr. Toomey and Governor Kemp have modeled the behavior of wearing facial coverings as examples for Georgians to follow; and

WHEREAS, according to the Georgia Department of Public Health COVID-19 update on Sunday, January 31, 2021, Georgia now has 749,867 confirmed cases of COVID-19, including 11,136 confirmed cases in Athens-Clarke County; and

WHEREAS, according to the Georgia Department of Public Health COVID-19 update, 12,570 individuals in Georgia have died and 50,237 have been hospitalized after contracting COVID-19; and

WHEREAS, as indicated above, the state of Georgia remains under a state of emergency as a result of the COVID-19 pandemic; and

WHEREAS, Governor Brian Kemp has relaxed and/or removed many restrictions on businesses resulting in citizens and visitors interacting in public and commercial establishments; and

WHEREAS, the guidelines promulgated by the White House on re-opening America specifically call for a 14-day downward trajectory among other gating criteria, which guidelines are specifically incorporated by reference; and

WHEREAS, the incidence of infection and death in the territorial limits of the Unified Government of Athens-Clarke County, hereinafter referred to as "Athens-Clarke County," continues to increase, signifying the continued spread of the highly contagious and deadly disease; and

WHEREAS, this continued increase is a threat to the health, safety, and welfare of the Athens-Clarke County community, especially individuals in Vulnerable Populations and Other Populations at Risk; and

WHEREAS, the number of cases is growing rapidly; and if COVID-19 continues to spread in Athens-Clarke County and the surrounding communities, the number of persons relying on medical, pharmaceutical, and general cleaning supplies will increase, the private and public sector work force will be negatively impacted by absenteeism, and the demand for medical facilities may exceed locally available resources; and

WHEREAS, the CDC indicates that there is evidence of widespread community transmission in Georgia; and

WHEREAS, the CDC and public health officials expect that additional cases of COVID-19 will be identified in the coming days; and

WHEREAS, the CDC advises that the use of masks or cloth facial coverings will slow the spread of COVID-19, and the CDC recommendations on PPE usage are hereby incorporated by reference; and

WHEREAS, taking measures to control outbreaks minimizes the risk to the public, maintains the health and the safety of the residents of Athens-Clarke County, and limits the spread of infection in our communities and within the healthcare delivery system; and

WHEREAS, it is vitally important that we all work together to decrease the widespread

proliferation of COVID-19 among us all now rather than suffer the unfortunate and devastating medical and economic consequences later; and

WHEREAS, pursuant to the authority of O.C.G.A. § 38-3-28(a), local governments are specifically empowered to enact rules and regulations as may be necessary for emergency management purposes; and

WHEREAS, O.C.G.A. § 38-3-28(a) also grants political subdivisions the power to supplement the Governor's Executive Orders; and

WHEREAS, this order is intended to be entered with due regard to the uniform principle that masks or facial coverings will slow the spread of COVID-19 as contemplated by O.C.G.A. § 38-3-28(c); and

WHEREAS, this emergency order is authorized by O.C.G.A. §§ 38-3-4 and 38-3-28 and the local control provisions of Governor Kemp's Executive Order of January 15, 2021, and it is specifically intended to supplement such declaration, as amended, and should not be construed to be inconsistent therewith; and

WHEREAS, notwithstanding the foregoing, the Supreme Court of Georgia has noted that the Unified Government of Athens-Clarke County, Georgia, is neither a county nor a municipal government, but rather a "new political entity" formed in accordance with "the constitutionally-sanctioned consolidation of municipal and county governmental and corporate powers and functions";² and

WHEREAS, pursuant to O.C.G.A. § 38-3-51, the Governor's declared public health emergency authorizes the Mayor and Commission to use emergency powers in O.C.G.A. §§ 38-3-1 through 38-3-64; and

WHEREAS, pursuant to O.C.G.A. § 38-3-6, during an emergency, O.C.G.A. §§ 38-3-1 through 38-3-64 are supposed to be liberally construed to effectuate their purposes; and

WHEREAS, pursuant to Section 1-104 (d) of the Charter of the Unified Government of Athens-Clarke County, Georgia, the Mayor and Commission have the right, duty, power, privilege and authority to exercise and enjoy all other powers, duties, functions, rights, privileges, and immunities necessary and proper to promote or protect the safety, health, peace, security and general welfare of said government and its inhabitants and to exercise all implied powers necessary to carry into execution all powers granted in this Charter as fully and completely as if such powers were fully enumerated herein and to do and perform all of the acts pertaining to its property, affairs and local government which are necessary or proper in the legitimate exercise of its corporate powers and governmental duties and functions; and

WHEREAS, pursuant to Sub-Sections (36) and (39) of Section 8-114 of the Charter of the Unified Government of Athens-Clarke County, Georgia, the Mayor and Commission have the following additional powers:

(17) Health: To prescribe and enforce health and sanitation standards; and

(36) Emergencies: To provide for the determination, proclamation and combatting of emergencies; and

² *Athens-Clarke County v. Walton Electric Membership Corporation*, 265 Ga. 229, 230 (1995).

(39) General health, safety, and welfare: To define, regulate and prohibit any act, practice, conduct or use which is detrimental to the health, sanitation, cleanliness, welfare, and safety of the inhabitants of the unified government; and

WHEREAS, the United States Supreme Court has previously held that “[u]pon the principle of self-defense, of paramount necessity, a community has the right to protect itself against an epidemic of disease which threatens the safety of its members”; and

WHEREAS, the Mayor and Commission of Athens-Clarke County, Georgia have determined that it is necessary to continue its Declaration of a Local State of Emergency; and

WHEREAS, the following actions related to requiring facial coverings in public are necessary and appropriate to balance the public’s interest in being free from undue restrictions with the compelling public interest of providing for the health, safety and welfare of the residents of Athens-Clarke County and the surrounding communities, particularly those individuals who are members of Vulnerable Populations and Other Populations at Risk; and

WHEREAS, in the judgment of the Mayor and Commission of the Unified Government of Athens-Clarke County, Georgia, with advice from other subject matter experts, there exist emergency conditions as a result of COVID-19 within the geographical boundaries of the Unified Government as described in Section 1-102 of the Charter requiring extraordinary and immediate corrective actions for the protection of the health, safety, and welfare of the citizens of Athens-Clarke County and the surrounding communities;

NOW, THEREFORE, the Commission of Athens-Clarke County, Georgia hereby ordains and declares that a local state of emergency continues to exist within the territorial limits of the Unified Government of Athens-Clarke, County, Georgia, and shall continue until the conditions requiring this declaration are abated.

NOW, THEREFORE, because of the local state emergency ordained and declared above, the Commission of Athens-Clarke County, Georgia hereby ordains and orders the following:

SECTION 1.

The Athens-Clarke County Office of Emergency Management shall continue with its activation of the Emergency Operations Plan and that the following sections of the Code of Athens-Clarke County, Georgia, shall continue to be implemented:

- (a) Section 3-4-5 Additional Emergency Powers
- (b) Section 3-4-9. Authority to Waive Procedures and Fee Structures

SECTION 2.

Any provisions of the Alcoholic Beverages Ordinance, Chapter 6-3 of the Code of Athens-Clarke County, Georgia, prohibiting an establishment licensed to sell beer or wine on premises from selling unopened bottles, cans, or growlers of beer and wine for take-out consumption off premises shall be temporarily suspended for the duration of this local

declaration. It is the intent of this order that any establishment licensed to sell beer and/or wine shall be authorized to sell unopened bottles or cans and sealed growlers of such beverages for take-out consumption off premises through the duration of the declared Local Emergency, including any extension thereof. All other provisions of the Alcoholic Beverages Ordinance not in conflict with this order shall remain in full force and effect.

SECTION 3.

Any provisions of the Alcoholic Beverages Ordinance which requires that each applicant for a new alcohol license submit to the Finance Department classifiable sets of fingerprints be temporarily suspended for the duration of the COVID-19 Local Emergency where said required sets of fingerprints are already on file with the Finance Department. It is the intent of this order that applicants who already possess a current alcoholic beverage license and whose sets of fingerprints are already on file with the Finance Department shall not have to provide new classifiable sets of fingerprints for the duration of the Local Emergency. All other provisions of the Alcoholic Beverages Ordinance not in conflict with this order shall remain in full force and effect.

SECTION 4.

Any provisions of the Alcoholic Beverages Ordinance which prohibit any person from having in his or her possession any alcoholic beverages in any open container be temporarily suspended as it applies to patrons or employees of any restaurant possessing a Class D (retail liquor by the drink), D1 (retail liquor by the drink, low volume restaurant), E (retail beer by drink), or F (retail wine by the drink) license who are transporting, serving, or consuming alcoholic beverages in an outdoor seating area within 100 feet of the outer wall of licensed premises or who are transporting alcoholic beverages across public streets, sidewalks or rights-of-way for the purpose of serving or consuming said beverages as described herein.

SECTION 5.

Any provisions of the Alcoholic Beverages Ordinance which prohibit any person from having in his or her possession any alcoholic beverages in any open container be temporarily suspended as it applies to patrons or employees of any licensee possessing a Class D (retail liquor by the drink), D1 (retail liquor by the drink, low volume restaurant), E (retail beer by drink), or F (retail wine by the drink) license who is participating in the Outdoor Retail Area Program pursuant to policy number MGR-008D entitled "A Policy to Extend the Outdoor Retail Areas Pilot Program for the Remainder of 2020," and who are transporting, serving, or consuming alcoholic beverages in the Outdoor Retail Area as approved by the Athens-Clarke County Central Services Department or who are transporting alcoholic beverages across public streets, sidewalks or rights-of-way for the purpose of serving or consuming said beverages in said Outdoor Retail Area.

SECTION 6.

The April 1, 2020 deadline for payment of Occupation Tax and regulatory fees continue to be extended to and including March 14, 2021. Any provisions of Athens-Clarke County's

Occupation Tax in conflict in with the extension granted herein are hereby temporarily suspended. All other provisions of the Occupation Tax Ordinance, Chapter 6-1 of the Code of Athens-Clarke County, Georgia, remain in full force and effect.

SECTION 7.

For the protection of members of the public, including members of Vulnerable Populations and members of other Populations at Risk, facial coverings or masks shall be required within Athens-Clarke County to slow the spread of the novel coronavirus disease known as COVID-19 as follows:

- (a) The provisions of this Ordinance shall only be enforced when the prevalence in Athens-Clarke County of confirmed cases of COVID-19 over the previous fourteen (14) days is equal to or greater than one hundred (100) cases per one hundred thousand (100,000) people according to the Georgia Department of Public Health.
- (b) For purposes of this Ordinance, the following terms are hereby defined as follows:
 - (1) *Entity* means any private business, establishment, corporation, non-profit corporation, or organization, including the curtilage thereof.
 - (2) *Facial covering or mask* means a device to cover the nose and mouth of a person and impedes the spread of saliva, respiratory droplets, or other fluids during speaking, coughing, sneezing or other intentional or involuntary action. Medical grade masks are not required; coverings may be fashioned as advised by the CDC and from other suitable fabrics. The mask must cover the mouth and nose of the wearer.
 - (3) *Polling place* means the room provided in each precinct for voting at a primary or election.
 - (4) *Public place* means any place other than a personal vehicle, residential property, or an entity including the curtilage thereof.
- (c) Except as otherwise provided in this Ordinance all persons in an entity or a public place shall wear a facial covering or mask over the mouth and nose at all times where other physical distancing measure may be difficult to maintain from non-cohabitating persons.
- (d) Facial coverings or masks are not required in the following circumstances:
 - (1) In personal vehicles or upon residential property;
 - (2) When a person is alone in enclosed spaces or only with other household members;
 - (3) When the individual has a bona fide religious objection to wearing a facial covering or mask;

- (4) While drinking or eating;
 - (5) When a licensed healthcare provider has determined that wearing a facial covering or mask causes or aggravates a health condition for the individual or when such person has a bona fide medical reason for not wearing a facial covering or mask;
 - (6) When wearing a facial covering or mask would prevent the receipt of personal services or performing work in the course of employment;
 - (7) When complying with the directions of a law enforcement officer or for the purposes of verifying a person's identity, such as when purchasing alcohol, tobacco, or prescription drugs or when engaging in a financial transaction;
 - (8) Children under the age of ten (10) years;
 - (9) When the individual is having difficulty donning or removing a face mask or face covering without assistance;
 - (10) At any polling place and no individual shall be denied ingress or egress to or from a polling place for failure to wear a facial covering or mask; and
 - (11) When outdoors and maintaining social distancing from anyone other than individuals with whom they cohabitate.
- (e)
- (1) Every entity subject to this Ordinance which does not consent to enforcement of this Ordinance upon its property shall post a clearly legible sign in one inch Arial font at all public entrances of such entity stating the following: "This location does not consent to enforcement of any local face covering requirement upon this property."
 - (2) If an entity does not post the signage described in subparagraph (1) of this paragraph it shall be conclusively presumed to have consented to enforcement of this Ordinance on its property and failures by individuals to wear facial coverings or masks as required by this ordinance shall be determined to be violations and enforced as contemplated in paragraph (f).
- (f) Violations of this Section 6 may be enforced by a notice of ordinance violation issued by any police officer, code enforcement officer, or other authorized law enforcement official, as provided below:
- (1) A person who fails to comply with paragraph (c) of Section 6 of this Ordinance shall be first given a warning and an opportunity to put on a facial covering or mask, leave the entity, or comply with one of the exceptions in paragraph (d) of Section 6.

- (2) If the person violating this Ordinance refuses or fails to comply with this Ordinance after being given a warning pursuant to subparagraph (1) of this paragraph then such person may be subject to a civil penalty of not more than \$25.00 on the first offense and not more than \$50.00 on the second and any subsequent offenses.
 - (3) A notice of violation may be served by delivery into the hands of the suspected violator or by other reasonable process for serving notice of ordinance violations used by Athens-Clarke County.
 - (4) Violations of this ordinance shall not be enforced against any entity and shall not be taken against any owner, director, officer, or agent of an entity for the failure of their customers to comply with this ordinance.
 - (5) Notwithstanding the foregoing, 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, including providing complimentary masks, explaining the importance of wearing facial coverings during this pandemic, and issuing verbal and written warnings.
- (g) In all locations where facial coverings or masks are not required to be worn pursuant to this Ordinance, they are strongly encouraged to be worn.

SECTION 8.

This Ordinance shall become effective at 8:00 a.m. on the next day following the Mayor's approval, and will continue to be in effect until 11:59 p.m. on Sunday, March 14, 2021, or until it is extended, rescinded, superseded, or amended by an ordinance of the Commission.

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

All Ordinances or parts of Ordinances in conflict with this Ordinance are, to the extent of such conflict, hereby repealed or set aside.

SECTION 9.

Copies of this Ordinance shall be: (1) promptly posted at Athens-Clarke County City Hall, 301 College Avenue, Athens, Georgia; (2) promptly posted on the www.accgov.com website; and (3) provided to any member of the public requesting a copy of this Order.

SO ORDERED AND ORDAINED this ___ day of February, 2021.

**THE UNIFIED GOVERNMENT OF ATHENS-
CLARKE COUNTY, GEORGIA**

Kelly Girtz, Mayor

Attest:

Jean Spratlin, Clerk of Commission

[SEAL]