

CITY OF CONCORD

In the year of our Lord two thousand and twenty-two

AN ORDINANCE amending the CODE OF ORDINANCES, Title I, General Code; Chapter 13
Public Health, Article 13-4, Vaccinations and Communicable Disease

The City of Concord ordains as follows:

SECTION I: Title I, General Code; Chapter 13 Public Health, Article 13-4 Vaccinations and Communicable Disease, by amending reserved Section 13-4-14 to be titled “Wearing of Face Coverings in the City of Concord – COVID-19” as follows:

13-4-14, Wearing of Face Coverings In The City of Concord – COVID-19

WHEREAS, as a result of the continued consequences of the Coronavirus Disease 2019 (COVID-19) pandemic, the Secretary of the United Department of Health and Human Services, pursuant to the authority vested under section 319 of the Public Health Service Act, renewed effective October 18, 2021 the determination that a public health emergency exists and has existed since January 27, 2020, nationwide; and

WHEREAS, according to the State of New Hampshire’s COVID-19 Response website, as of January 4, 2022, there is currently a “substantial” level of community transmission in Merrimack County, with new cases per 100,000 population over the last fourteen days at a rate of 1,056.2, and a test positivity rate over the last seven days of 19.8%; and

WHEREAS, according to the Centers for Disease Control and Prevention (“CDC”), as of January 4, 2022, there is currently a “high” level of community transmission in Merrimack County using the indicators of new cases per 100,000 persons in the past seven days and/or percentage of positive NAATs tests during the past seven days. The CDC currently recommends that everyone in the county should wear a mask in public, indoor settings, with new cases per 100,000 at 794 over the last seven days, with a test positivity rate of 15;

WHEREAS, if COVID-19 continues to spread in New Hampshire, the number of persons requiring medical care may exceed locally available resources. According to the State of New Hampshire’s COVID-19 Response website, as of January 4, 2022,

there are only 13.7% of total staffed hospital beds available statewide, and there are only 8.2% of staffed adult ICU beds available statewide.

WHEREAS, Controlling outbreaks minimizes the risk to the public, maintains the health and safety of the people of New Hampshire, reduces the impact on hospital and ICU beds, and limits the spread of infection in our communities and within the healthcare delivery system; and

WHEREAS, to reduce the spread of COVID-19, the CDC recommends that people wear face coverings in public settings when around people outside of their household, especially when other social/physical distancing measures by keeping a distance of six feet between yourself and others are difficult to maintain; and

WHEREAS, New Hampshire's courts have recognized that the COVID-19 pandemic justifies the Governor's declaration of a State of Emergency and the restrictions placed on New Hampshire's citizens, businesses, and other organizations through the Emergency Orders. *See Binford, et. al. v. Sununu*, Merrimack Cty. Super. Ct., 217-2020-CV-00152 (March 25, 2020) (Kissinger, J.), at 7-9; *Devine v. Sununu*, Rockingham Cty. Super. Ct., 218-2020-CV-00602 (June 18, 2020) (Schulman, J.); *Cooper v. Sununu*, Hillsborough Cty. Super. Ct., Southern Dist., 2020-CV-00266 (July 13, 2020) (Colburn, J.), at 15; *Athens v. Sununu*, Cheshire Cty. Super. Ct., 213-2020-CV-00104 (July 14, 2020) (Ruoff, J.), at 6-7; and

WHEREAS, COVID-19 is a global pandemic with an unprecedented public health emergency and with financial and economic devastation resulting therefrom, which require the State and its municipalities to continue to respond rapidly to ensure that necessary supplies, economic infrastructure, and other appropriate emergency responses are provided; and

WHEREAS, the purpose of New Hampshire's Communicable Disease Statute codified under RSA chapter 141-C is to prevent, identify, control and when possible eradicate communicable diseases at the earliest possible time by application of appropriate public health measures and medical practices; and

WHEREAS, RSA 47:17, XV authorizes New Hampshire municipalities to make any bylaws and regulations for the well-being of the municipality; and

WHEREAS, in assessing the validity of an ordinance, courts "will not independently examine the factual basis for the ordinance." *Community Resources/or Justice, Inc. v. City of Manchester*, 154 N.H. 748, 757 (2012). Instead, the court "will inquire only as to whether the legislature could reasonably conceive to be true the facts upon which it is based." In addition, courts "will not second-guess the town's choice of

means to accomplish its legitimate goals, so long as the means chosen is rationally related to those goals.” *Dow v. Town of Effingham*, 148 N.H. 121, 124 (2002); and

WHEREAS, the Concord City Council has determined that to continue to reduce the spread and infection of COVID-19, and to protect the interests of citizens who may need to patronize businesses that are open to other members of the general public, obtain child care or to use public transportation, it is in the interest of the health and safety of all Concord citizens, residents, visitors, businesses, and the employees of our City and businesses, to wear face coverings while inside businesses.

NOW, THEREFORE, the Concord City Council, by the authority vested under the RSA chapter 47, and other applicable laws and orders, hereby enacts the following Ordinance.

1. As used herein “face covering” is defined as a covering made of cloth, fabric, or other soft or permeable material, without holes, that covers at least the nose, mouth, and surrounding areas of the lower face. A face covering may be factory made, homemade, or improvised from ordinary household material.
2. Employees of all businesses shall wear a face covering over their mouth and nose when interacting with the public and whenever they are within six feet of a co-worker or a customer.
3. Members of the public entering any business, excluding any outdoor area, where business is conducted, work site, or municipal government building must wear a face covering over their nose and mouth.
4. Members of the public entering a restaurant for the purpose of picking up food for take-out or any other purpose must wear a face covering over their mouth and nose. Members of the public dining at a restaurant may remove face covering when actively eating and drinking.
5. Residents, visitors, and members of the public entering or present at a residential or commercial building complex of greater than two (2) units must wear a face covering over their nose and mouth while in common areas and communal spaces.
6. This order applies to all individuals over the age of 5, regardless of vaccination status.
7. A face covering is not required to be worn by any person for whom wearing a face covering may pose a risk for health-related reasons, or for any person who

has a disability or medical condition that makes wearing a face covering difficult. However, in these cases, special effort should be taken to maintain physical distance of at least six feet from other individuals when possible.

8. All businesses open to the public, including restaurants, retail stores, service providers, and places of amusement and recreation, and residential and commercial buildings of greater than two (2) units shall post at each public entrance a notice stating “FACE COVERINGS REQUIRED PER THE CITY OF CONCORD ORDINANCE.”
9. Persons engaged in utilizing cardio, strength training, and other gymnasium equipment may remove the face covering during the actual use of such equipment provided a distance of six (6) feet from any other person is maintained.
10. Persons at places of amusement, including bingo halls, bowling alleys, charitable gaming facilities, and similar places where food and drink is served secondarily to the main activity may remove face covering while actually engaged in eating or drinking and not at other times.
11. Persons receiving personal care services including hair cutting and other hair treatment, facials, tattooing, piercing, and similar services, may remove face covering during any limited period during which the face covering actually interferes with the performing of the service.
12. This ordinance does not include religious institutions, non-municipal governmental buildings, or schools. The City Manager is authorized to establish reasonable protocols with the Fire Department relative to face coverings.
13. To the extent this Ordinance conflicts with stricter requirements set forth by the Governor’s Office and/or the State of New Hampshire, those stricter requirements shall apply.
14. Penalties for non-compliance with this Ordinance are as follows: 1st offense – a verbal or written warning, 2nd offense up to a \$25 fine, 3rd or subsequent offense up to a \$50 fine.

SECTION II: This Ordinance shall take effect upon its passage and shall continue at all times until the level of community transmission rates in Merrimack County, New Hampshire for COVID-19 are deemed to be “low” as defined by the CDC, unless otherwise repealed or extended. Information regarding the level of community transmission will be posted and updated weekly on the City website.