

CITY OF CONCORD

In the year of our Lord two thousand and twenty

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 adding a new Section 13-4-14 entitled “Wearing of Face Coverings in the City of Concord – COVID-19”

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

WHEREAS, on March 13, 2020, the President of the United States declared a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak. This declaration remains in effect as of the effective date of this ordinance; and

WHEREAS, as of August 3, 2020, the Centers for Disease Control and Prevention (CDC) reports that every U.S. state has reported cases of COVID-19 to the CDC, and that 4,748,806 confirmed cases of COVID-19 have occurred in the United States and territorial partners with 156,311 deaths; and

WHEREAS, the CDC anticipates that while a high percentage of individuals affected by COVID-19 will experience mild flu-like symptoms, some will have more serious symptoms and require hospitalization, particularly individuals who are elderly or have underlying chronic health conditions; and

WHEREAS, the CDC reports that COVID-19 is most commonly spread from an infected person to others through respiratory droplets, including:

- Between people who are in close contact with one another (within about 6 feet);
- Through respiratory droplets produced when an infected person coughs, sneezes, or talks;
- When the droplets land in the mouths or noses of people who are nearby or are possibly inhaled into the lungs; or
- By people who are not showing symptoms but who are infected with COVID-19.

WHEREAS, the CDC reports that COVID-19 is spread mainly from person to person, that COVID-19 is currently spreading very easily and sustainably, that COVID-19 is spreading more efficiently than influenza, and that the best way to prevent illness is to avoid being exposed to COVID-19 by taking the steps which include wearing a face covering over a person's mouth and nose when around others; and

WHEREAS, as of August 5, 2020, New Hampshire's Department of Health and Human Services, Division of Public Health reports 6,693 cases of COVID-19; 418 deaths; 698 hospitalizations; approximately 2,975 individuals being monitored; and all 10 counties in the State have been impacted; and

WHEREAS, as of August 5, 2020, New Hampshire continues to have positive cases of COVID-19 each day; and

WHEREAS, as of August 5, 2020, states neighboring New Hampshire have reported significant numbers of COVID-19 cases: Massachusetts has reported 111,033 confirmed positive cases and 8,436 deaths, Rhode Island has reported 19,481 positive cases and 1,012 deaths, and Connecticut has reported 50,110 positive cases and 4,437 deaths; and

WHEREAS, the Department of Health and Human Services, Division of Public Health has found that community-based transmission of COVID-19 continues to occur in the State and has been identified in all 10 counties; and

WHEREAS, if COVID-19 spreads in New Hampshire at a rate comparable to the rate of spread in other states and countries, the number of persons requiring medical care may exceed locally available resources. Controlling outbreaks minimizes the risk to the public, maintains the health and safety of the people of New Hampshire, and limits the spread of infection in our communities and within the healthcare delivery system; and

WHEREAS, New Hampshire State Epidemiologist Dr. Benjamin Chan has determined that, while the State's mitigation strategy has been effective in controlling the spread of COVID-19, community mitigation has been and continues to be critically important; and

WHEREAS, the New Hampshire Department of Health and Human Services, Bureau of Infectious Disease Control advises that the United States is currently experiencing an accelerating pandemic where most states outside of New England are experiencing worsening outbreaks or uncontrolled community transmission; 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 distancing measures are difficult to maintain; and

WHEREAS, as of August 12, 2020, Governor Chris Sununu has issued 16 Executive Orders 2020-04 and 63 Emergency Orders regarding the Governor's declared state of emergency due to COVID-19. The Governor's declared state of emergency remains in effect as of the effective date of this ordinance; and

WHEREAS, the Governor's emergency orders include a requirement that certain businesses and organizations shall be required to comply with the sector-specific guidance recommended by the Governor's Economic Reopening Taskforce; and

WHEREAS, the Governor's emergency orders for Retail Establishments (most recently updated June 29, 2020) state that all staff must wear face coverings at all times when in the retail facility and in public locations or shared staff areas (e.g. break rooms), even if other individuals are not immediately present; and

WHEREAS, the Governor's emergency orders for Retail Establishments (most recently updated June 29, 2020) recommends but does not require customers to wear face coverings at all times when inside the store: and

WHEREAS, on May 29, 2020, the U.S. Supreme Court observed that "[t]he precise question of when restrictions on particular social activities should be lifted during the [COVID-19] pandemic is a dynamic and fact-intensive matter subject to reasonable disagreement," and stated that "[o]ur Constitution principally entrusts the safety and health of the people to the politically accountable officials of the States to guard and protect," *South Bay United Pentecostal Church, et al., Applicants v. Gavin Newsom, Governor of California, et al.*, No. 19A1044, 590 U.S._ (2020), at 3 (Roberts, C.J., concurring); 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 which may seem for the well-being of the city; 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, 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 when entering and exiting, and while inside a Retail Establishment.

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. As used herein “Retail Establishment” includes all businesses, organizations and facilities that are required to comply with the COVID-19 Reopening Guidance issued by the Governor’s Economic Reopening Taskforce for “Retail.” By way of example, “Retail” includes but is not limited to buildings or structures or a portion thereof, for the display and sale of commodities such as department stores, drug stores, convenience markets, retail or wholesale stores, grocery stores, home improvement stores, where such commodities are available for immediate purchase and removal from the premises. It does not include businesses that have incidental retail sales directly related to the services rendered by the business such

as cosmetology, barbering and health and fitness facilities, unless the sector-specific guidance issued by the Governor’s Economic Reopening Taskforce for that industry require compliance with the “Retail” guidance. In addition, to avoid any uncertainty or doubt, it, this ordinance shall not apply to the food service industry (restaurants) or places of worship which are subject to the Governor’s emergency orders.

3. Customers are required to wear a face covering at all times when inside a Retail Establishment, including any outdoor retail areas where business is conducted.
4. Members of the public utilizing the city trails, sidewalks and other pedestrian public ways, or public recreational lands, are strongly encouraged to wear face coverings when a physical distance of six feet cannot be maintained from other individuals, but not required.
5. Face coverings shall not be required for children under 10 years of age. Face coverings are not recommended for children less than 2 years of age.
6. 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. However, in these cases, special effort should be taken to maintain physical distance of at least six feet from other individuals.
7. To the extent this Ordinance conflicts with stricter requirements set forth in the Governor’s Emergency Orders on face coverings, the Governor’s Orders shall apply.
8. Penalties for non-compliance with this Ordinance are as follows: 1st offense - a written warning, 2nd offense and subsequent offense - a \$15 fine. The failure to pay the penalty within ten (10) days shall result in the fine doubling. The failure to pay the penalty within twenty (20) business days shall result in an additional fee or four times the original fee. Failure to pay the penalty fee after twenty (20) business days may also result in the issuance of a summons to appear in court to answer to the charge of violating the ordinance.

SECTION II: This Ordinance shall take effect upon its passage and shall discontinue on January 2, 2021 unless otherwise repealed or extended.