

***SUPPORTING MATERIALS TO
CITY COUNCIL MEETING***

June 25, 2020

AN EMERGENCY ORDINANCE TO REQUIRE FACE COVERINGS IN CERTAIN CIRCUMSTANCES; TO REAUTHORIZE AND AMEND THE AUTHORIZATION FOR ELECTRONIC MEETINGS; AND OTHER MATTERS RELATED THERETO

WHEREAS, on March 13, 2020, Governor Henry McMaster issued Executive Order No. 2020-08, as extended by Executive Order 2020-40 dated June 11, 2020, related to 2019 Novel Coronavirus (“**COVID-19**”) and declared that a state of emergency exists in the State of South Carolina (the “**State**”); and

WHEREAS, on March 30, 2020, the City Council of the City of Goose Creek (the “**City Council**”), as the governing body of the City of Goose Creek, South Carolina (the “**City**”) enacted Emergency Ordinance No. 2020-09 (the “**Prior Emergency Ordinance**”) to temporarily authorize electronic meetings and to suspend other local procedural rules; and

WHEREAS, as the number of COVID-19 cases continues to grow in the State, the South Carolina Department of Health and Environmental Control (“**DHEC**”) continues to warn of the risk of localized person-to-person spread of COVID-19, creating an extreme public health risk; and

WHEREAS, as of June 23, 2020, there were 26,572 confirmed cases of COVID-19 in the State, including 2,416 confirmed cases in Charleston County, South Carolina and 740 confirmed cases in Berkeley County, South Carolina; and

WHEREAS, the City Council finds it vitally important that individuals work together to decrease the widespread proliferation of COVID-19 among citizens of the City; and

WHEREAS, if COVID-19 continues to spread in the City and surrounding areas at its current rate, the number of persons relying on medical, pharmaceutical, and general cleaning supplies will increase, absenteeism will negatively impact the private and public sector work force, and the demand for medical facilities may exceed locally available resources; and

WHEREAS, the Centers for Disease Control and Prevention and DHEC advise the use of face coverings to slow the spread of COVID-19; and

WHEREAS, the Constitution of the State of South Carolina 1895, as amended (the “**Constitution**”), provides that “all laws concerning local government shall be liberally construed in their favor [and] [p]owers, duties and responsibilities granted local government subdivisions by this Constitution and by law shall include those fairly implied and not prohibited by this Constitution.” See S.C. Const. Art. VIII, Sect. 17; and

WHEREAS, the City is expressly empowered pursuant to Section 5-7-30 of the South Carolina Code of Laws 1976, as amended, to “enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State, including the exercise of powers in relation to roads, streets, markets, law enforcement, health, and order in the municipality or

respecting any subject which appears to it necessary and proper for the security, general welfare, and convenience of the municipality or for preserving health, peace, order, and good government in it . . . ”; and

WHEREAS, in construing Section 5-7-30, the South Carolina Supreme Court has previously held that “[m]unicipalities are granted broad police powers to enact ordinances with respect to any subject which appears necessary and proper for the security, general welfare and convenience of the municipality.” *Peterson Outdoor Advert. v. City of Myrtle Beach*, 327 S.C. 230, 234, 489 S.E.2d 630, 632 (1997); *see also Town of Hilton Head Island v. Fine Liquors, Ltd.*, 302 S.C. 550, 553, 397 S.E.2d 662, 664 (1990); and

WHEREAS, in the absence of express preemption, “[w]here the General Assembly specifically recognizes a local government's authority to enact local laws in the same field, the statutory scheme does not evidence legislative intent to occupy the entire field of regulation.” *Sandlands*, 394 S.C. at 466, 716 S.E.2d at 288 (2011); and

WHEREAS, in recent cases construing preemption in the State, the South Carolina Supreme Court has stated:

- (1) “An ordinance is preempted under implied field preemption when the state statutory scheme so thoroughly and pervasively covers the subject as to occupy the field or when the subject mandates statewide uniformity.” *Aakjer v. City of Myrtle Beach*, 388 S.C. 129, 133, 694 S.E.2d 213, 215 (2010);
- (2) “To preempt an entire field, an act must make manifest a legislative intent that no other enactment may touch upon the subject in any way.” *S.C. State Ports Auth. v. Jasper Cty.*, 368 S.C. 388, 395, 629 S.E.2d 624, 627 (2006);
- (3) When “the General Assembly specifically recognizes a local government's authority to enact local laws in the same field, the statutory scheme does not evidence legislative intent to occupy the entire field of regulation.” *Sandlands C & D, LLC v. Cty. of Horry*, 394 S.C. 451, 466, 716 S.E.2d 280, 288 (2011); and

WHEREAS, in consideration of City’s Home Rule powers, and the preemption cases recited above (which included a consideration of the provisions of Section 16-7-110 of the Code of Laws of South Carolina 1976, as amended), the South Carolina Attorney General, Alan Wilson, released a public statement on June 24, 2020 regarding the legality and validity of municipal ordinances requiring the wearing of masks wherein he publicly stated that “yes, a city can pass this type of ordinance”; and

WHEREAS, in light of the foregoing, to include the broad police powers of the City and the absence of State laws preempting the subject of this Ordinance, City Council finds it proper, necessary, and essential to enact this emergency ordinance to require face coverings be worn by persons when interacting in public spaces in the City in order to meet the public health crisis facing the City; and

WHEREAS, it is hereby determined that the continuation and spread of COVID-19 represents a public emergency affecting life, health, and safety, and therefore, it is proper, necessary, and essential to enact this Ordinance as an emergency ordinance.

NOW THEREFORE, be it hereby ordained in this emergency meeting of the City Council, as follows:

Section 1. Recitals.

Each finding or statement of fact set forth in the recitals hereinabove has been carefully examined and has been found to be in all respects true and correct.

Section 2. Requirement of Face Coverings.

(a) Terms using initial capitals in this Section 2 shall have the following definitions:

1. “City” means the City of Goose Creek, South Carolina.
2. “Face Covering” shall mean a cloth, fabric, textile, or impervious material without holes, that covers both the mouth and nose, including but not limited to surgical masks, respirators, face shields, handmade masks, bandanas, neck gaiters, scarves or wraps.
3. “Household” means Persons living in the same dwelling unit. Household does not include residents of separate dwelling units at the same location, such as may be the case at a dormitory, apartment complex or other multi-family housing complex.
4. “Person” means any human being in the City. For purposes of this Section 2, Person does not include: (i) children younger than 3 years old; (ii) individuals with medical conditions, mental health conditions, or disabilities which prevent the wearing of a Face Covering; (iii) individuals who are hearing impaired, or who are communicating with an individual who is hearing impaired, where the ability to see mouth function is essential to communication; (iv) individuals, while working, for whom wearing a Face Covering would create a risk to such individual related to their work, as dictated by local, state or federal regulations or applicable workforce guidelines; and (v) individuals receiving or obtaining medical service or treatment involving the mouth or nose wherein temporary removal of a Face Covering is necessary to perform the service or treatment.

(b) The use of a Face Covering is required by every Person within the boundaries of the City as detailed below. Every Person must wear Face Covering at all times when: (1) inside any building which is open to the public; (2) waiting to enter any building which open to the public; (3) interacting with other people in outdoor spaces, including but not limited to curbside, pickup, delivery, and service calls; (4) engaging in business activities in public, commercial, or industrial spaces; (5) utilizing public or commercial transportation services; or (6) walking or operating in

any public, commercial, or industrial area where maintaining a distance of six feet between other Persons at all times is not possible.

(c) Face Coverings are not required when a Person is: (1) traveling in a private vehicle; (2) alone in an enclosed space or able maintain a minimum distance of six feet from other Persons at all times; (3) outdoors and able maintain a minimum distance of six feet from other Persons at all times; (4) alone or only with other Household members; (5) drinking, eating or smoking (where smoking is permitted); (6) inside a private residence, including curtilage thereof; or (7) complying with a request of law enforcement.

Section 3. Civil Infraction. Any person who fails to comply with Section 2 of this Ordinance shall be guilty of a civil infraction, punishable by a fine of not more than \$25.00 for each violation. Enforcement of the civil infraction authorized hereunder shall be administered under the provisions of Section 94.16 – “Enforcement” of the City’s code of ordinance.

Section 4. Reauthorization and Amendment of the Prior Emergency Ordinance. The Prior Emergency Ordinance expired by its terms on May 30, which was the sixty-first day after its enactment. The City Council hereby reauthorizes the provisions of the Prior Emergency Ordinance related to electronic meetings, hearings and other procedures until this Ordinance expires pursuant to Section 5 hereof. However, Section 3 of the Prior Emergency Ordinance is amended and restated in its entirety, as follows:

“Section 3.

A. *Public Comment.* With respect to any electronic meeting, any public comment periods provided for by local ordinance, resolution, policy, or bylaws are hereby suspended. However, members of the public may submit written public comments to the City Clerk no later than one hour prior to any regular meeting, which shall be distributed to the members of the Governing Body at such meeting, and the Mayor shall read such comments aloud during the public comment period. Members of the public wishing to speak during the meeting shall sign up with the City Clerk no later than one hour prior to the scheduled time of the meeting. The City Clerk shall contact those who wish to speak at during the meeting by phone, in the order the requests were received, to permit them to address the Governing Body at the appropriate time during the meeting. All public input shall otherwise be conducted in accordance with all other Rules and Procedures of the Governing Body.

B. *Public Hearings.* With respect to any public hearing that is required by law to be held in connection with any proposed action of the Governing Body, electronic public hearings shall be permitted. Members of the public wishing to provide written comments for any such public hearing may email comments to the City Clerk no later than one hour prior to the scheduled time for such public hearing, and the Mayor shall read such comments aloud during the public hearing. Members of the public wishing to speak at the public hearing shall sign up with the City Clerk no later than one hour prior to the scheduled time for the public hearing. The City

Clerk shall contact those who wish to speak at the public hearing by phone, in the order the requests were received, to admit them to the public hearing. Public hearings shall otherwise be conducted in accordance with all other Rules and Procedures of the Governing Body. Notices of public hearings shall include detailed instructions regarding the manner in which the public hearing shall be held.

C. *Suspension of Local Provisions.* During the period of effectiveness of this Ordinance, any ordinance, resolution, policy, or bylaw of the Governing Body that conflicts with the provisions hereof is suspended and shall be superseded hereby.”

Section 5. Effective Date; Expiration. The provisions hereof shall be effective upon a single reading and two-thirds vote of the City Council and shall expire on the sixty-first day following the effective date hereof.

DONE AS AN EMERGENCY ORDINANCE and approved at a meeting duly assembled by no less than an affirmative vote of two-thirds of the members of the City Council present, this 25th day of June 2020.

**CITY OF GOOSE CREEK, SOUTH
CAROLINA**

(SEAL)

Mayor Gregory S. Habib

ATTEST:

Kelly J. Lovette, City Clerk

Mayor Pro Tem Kevin M. Condon

Councilmember Debra Green-Fletcher

Councilmember Corey McClary

Councilmember Jerry Tekac

Councilmember Gayla McSwain

Councilmember Christopher Harmon

Approved as to form

By: _____
City Attorney