

**AN ORDINANCE TO AMEND THE CODE OF DEKALB COUNTY, GEORGIA AS REVISED 1988, TO AMEND CHAPTER 18, NUISANCES, TO ENACT AN ORDINANCE REQUIRING THE WEARING OF A FACE COVERING OR MASK WHILE IN PUBLIC PLACES, AND FOR OTHER PURPOSES**

**WHEREAS**, the Governing Authority has the power pursuant to the home rule powers of the Georgia Constitution to enact ordinances, rules and regulations that are reasonably necessary to protect the health, safety and welfare of its citizens;

**WHEREAS**, the World Health Organization has concluded that COVID-19 is spread primarily by respiratory droplets expelled when an infected person coughs, sneezes or speaks;

**WHEREAS**, the Director for the Centers for Disease Control, Dr. Robert Redfield, stated it is possible that as many as one in four people who are infected with COVID-19 show no symptoms, and that people who do not experience symptoms can spread COVID-19 to other individuals;

**WHEREAS**, the CDC has stated that people infected with COVID-19 are contagious before they start showing symptoms, and that individuals who are infected can spread the virus to others before the onset of symptoms;

**WHEREAS**, based on evidence that people experiencing no symptoms can spread COVID-19, the CDC recommends that all persons over the age of (2) two years wear face coverings or masks in public and when around people of separate households, particularly when other social distancing measures are difficult to maintain;

**WHEREAS**, pursuant to O.C.G.A. § 38-3-28(c), all orders, rules, and regulations related to public health emergencies shall be consistent with the recommendations of federal public health authorities, including the CDC;

**WHEREAS**, Governor Kemp has issued an executive order “strongly encouraging” the use of face coverings or masks. *See* Executive Order 04.23.20.02;

**WHEREAS**, DeKalb County is distributing over 50,000 masks and bottles of hand sanitizer in municipalities and throughout unincorporated DeKalb to stop the spread of COVID-19;

**WHEREAS**, County officials are educating, interacting and enforcing/informing the public of the requirements of this mask wearing ordinance and such officials shall also give masks to persons free of charge;

**WHEREAS**, six of the thirteen municipalities in DeKalb County have adopted mandatory mask ordinances;

**WHEREAS**, upon adoption of this ordinance, elected officials representing eighty-one percent (81%) of DeKalb County residents will have sought to preserve and protect the public health and economic recovery of DeKalb County;

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

**WHEREAS**, the number of cases in DeKalb County and throughout the state of Georgia are not trending downward and are instead increasing rapidly and the number of persons needing medical attention and facilities could exceed available resources and the private and public sector workforce and economy will be negatively impacted;

**WHEREAS**, this is a public health and economic emergency and businesses in the State of Georgia and across the country have determined the best way to support economic recovery while following the advice of scientific and health care professionals is to require masks while patronizing their establishments;

**WHEREAS**, the nation's largest retail, grocery, and big-box stores including Walmart, The Home Depot, Kroger, Costco, CVS, Target, Apple Store, Best Buy, Dollar Tree, Publix, Verizon, AT&T, Kohl's and Starbucks have instituted policies requiring both employees and customers to wear masks,

**WHEREAS**, the public health crisis in DeKalb County Georgia is ongoing. as of July 20, 2020, there have been 188 deaths and 9,800 confirmed cases in the County. On June 25, 2020, 845 people were hospitalized in DeKalb and on July 20, 2020, hospitalizations now number 1,266;

**WHEREAS**, the County believes it is in the interest of the health, safety, and welfare of residents and visitors that businesses be encouraged to require face coverings or masks while shopping and to be provided with the materials to do so;

**WHEREAS**, medical scientists and researchers recently published a paper estimating "the benefits of each additional cloth mask worn by the public are conservatively in the \$3,000-\$6,000 range due to their impact in slowing the spread of the virus;"<sup>1</sup>

**WHEREAS**, the purpose of face covering or mask is to protect the public from the mask wearer inadvertently spreading the virus. As such, the use of face coverings or masks is a matter of public health, and individuals who do not use such coverings create a public safety hazard by potentially exposing others to the virus, meanwhile gaining the health benefit offered by others who utilize face coverings. Requiring the use of face coverings or masks is therefore necessary to ensure the safety of all persons and to slow the spread of the virus;

**WHEREAS**, Governor Brian Kemp has ordered that "Code Section 16-11-38(b)(4) shall not apply to any person wearing a 'mask, hood, or device by which any portion of the face is so hidden,

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1 See [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3567438](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3567438)

concealed, or covered as to conceal the identity of the wearer' if that person is wearing such device for the purpose of complying with the guidance of any healthcare agency or to prevent the spread of COVID-19." See Executive Order 04.13.20.02;

**WHEREAS**, this ordinance is authorized and specifically intended to ensure that the community has access to masks and an understanding of the need to wear masks during this stage of the COVID-19 Pandemic; and

**WHEREAS**, this ordinance is consistent with the Governor's Executive Orders regarding the public health crisis in the State of Georgia,

**NOW, THEREFORE**, be it ordained by the Governing Authority of DeKalb County, Georgia, and it is hereby ordained by the authority of same, that Chapter 18 of the Code of DeKalb County, as Revised 1988, be and the same is hereby amended as follows:

### **PART I. ENACTMENT**

*By amending article VI, to add reserved sections to read as follows:*

**Secs. 18-157 – 18-159. Reserved.**

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*By adding article VII to chapter 18 to read as follows:*

### **ARTICLE VII. MASK WEARING ORDINANCE**

**Sec. 18-600. Purpose.**

- (a) The purpose of this ordinance is to reduce the spread of the COVID-19 virus in DeKalb County. Specifically, the following facts exist:
  - (1) the World Health Organization has concluded that COVID-19 is spread primarily by respiratory droplets expelled when an infected person coughs, sneezes or speaks;
  - (2) the Director for the Centers for Disease Control, Dr. Robert Redfield, stated it is possible that as many as one in four people who are infected with COVID-19 show no symptoms, and that people who do not experience symptoms can spread COVID-19 to other individuals;
  - (3) the CDC has stated that people infected with COVID-19 are contagious before they start showing symptoms, and that individuals who are infected can spread the virus to others before the onset of symptoms;

- (4) based on evidence that people experiencing no symptoms can spread COVID-19, the CDC recommends that all persons over the age of (2) two years wear face coverings in public and when around people of separate households, particularly when other social distancing measures are difficult to maintain;
- (5) O.C.G.A. § 38-3-28(c) requires all orders, rules, and regulations related to public health emergencies shall be consistent with the recommendations of federal public health authorities, including the CDC;
- (6) Governor Kemp has issued an executive order “strongly encouraging” the use of face coverings. *See* Executive Order 04.23.20.02;
- (7) DeKalb County is distributing over 50,000 masks and bottles of hand sanitizer in municipalities and throughout unincorporated DeKalb to stop the spread of COVID-19;
- (8) As County officials are educating, interacting and enforcing/informing the public of the requirements of this mask wearing ordinance, such officials shall also give masks to persons free of charge;
- (9) six of the thirteen municipalities in DeKalb County have adopted mandatory mask ordinances;
- (10) upon adoption of this ordinance, elected officials representing eighty-one percent (81%) of DeKalb County residents will have sought to preserve and protect the public health and economic recovery of DeKalb County;
- (11) the guidelines promulgated by the White House on reopening America specifically call for a 14-day downward trajectory among other gating criteria, which guidelines are specifically incorporated by reference;
- (12) the number of cases in DeKalb County and throughout the state of Georgia are not trending downward and are instead increasing rapidly and the number of persons needing medical attention and facilities could exceed available resources and the private and public sector workforce and economy will be negatively impacted;
- (13) this is a public health and economic emergency and businesses in the State of Georgia and across the country have determined the best way to support economic recovery while following the advice of scientific and health care professionals is to require masks while patronizing their establishments;
- (14) the nation’s largest retail, grocery, and big-box stores including Walmart, The Home Depot, Kroger, Costco, CVS, Target, Apple Store, Best Buy, Dollar Tree, Publix, Verizon, AT&T, Kohl’s and Starbucks have instituted policies requiring both employees and customers to wear masks,

- (15) the public health crisis in DeKalb County Georgia is ongoing. as of July 20, 2020, there have been 188 deaths and 9,800 confirmed cases in the County. On June 25, 2020, 845 people were hospitalized in DeKalb and on July 20, 2020, hospitalizations now number 1,266;
- (16) the County believes it is in the interest of the health, safety, and welfare of residents and visitors that businesses be encouraged to require face coverings or masks while shopping and to be provided with the materials to do so;
- (17) medical scientists and researchers recently published a paper estimating “the benefits of each additional cloth mask worn by the public are conservatively in the \$3,000-\$6,000 range due to their impact in slowing the spread of the virus;”
- (18) the purpose of face covering is to protect the public from the mask wearer inadvertently spreading the virus. As such, the use of face coverings is a matter of public health, and individuals who do not use such coverings create a public safety hazard by potentially exposing others to the virus, meanwhile gaining the health benefit offered by others who utilize face coverings. Requiring the use of face coverings is therefore necessary to ensure the safety of all persons and to slow the spread of the virus;
- (19) Governor Brian Kemp has ordered that “Code Section 16-11-38(b)(4) shall not apply to any person wearing a ‘mask, hood, or device by which any portion of the face is so hidden, concealed, or covered as to conceal the identity of the wearer’ if that person is wearing such device for the purpose of complying with the guidance of any healthcare agency or to prevent the spread of COVID-19.” *See* Executive Order 04.13.20.02;
- (20) this ordinance is authorized and specifically intended to ensure that the community has access to masks and an understanding of the need to wear masks during this stage of the COVID-19 Pandemic; and
- (21) this ordinance is consistent with the Governor’s Executive Orders regarding the public health crisis in the State of Georgia,

#### **Sec. 18-601. Definitions.**

Words or phrases not defined in this article but defined in applicable state law or the Code of DeKalb County, as Revised 1988, shall be given that meaning. All other words or phrases shall be given their common ordinary meaning unless the context requires otherwise. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them below except where the text clearly indicates a different meaning:

*“Conscientious Objector”* means a person who swears in a written affidavit under penalty of perjury, that she/he will not wear a mask because of health-related, religious or ethical beliefs.

*“COVID-19 Prevention Class”* means a virtual or in-person class offered by a private or public entity using a standardized written curriculum, developed by the DeKalb County District Health Director or designee.

*“Face Covering”* or *“Mask”* means a fabric which covers the nose and mouth. It can be secured to the head with ties or straps or simply wrapped around the lower face. It can be made of a variety of materials, such as cotton, silk, or linen. A cloth face covering may be factory-made or sewn by hand or can be improvised from household items such as scarves, T-shirts, sweatshirts, or towels.

*“Person”* shall mean an individual and shall also mean any individual associated with a business who has control or authority to enforce the requirements of this article within the business, such as a manager, owner or supervisor. Person also means an employee or designee who is present at the business but does not have the title of manager, supervisor, etc. but has authority and ability to ensure that the requirements of this article are met.

*“Public place”* means any place other than the privately owned or leased location where a person resides or that person’s own personal vehicle. Public place does not mean any facility owned or operated by the state of Georgia or the federal government.

*“Social distance”* means a maintaining a distance of at least six feet from any other person who is not a member of the same household.

#### **Sec. 18-602. Requirement to wear a Face Covering or Mask.**

- (a) All persons present in the county who are over the age of (8) eight years are required to utilize a face covering or mask which covers the nose and mouth when in any public place, except as exempt as provided in this article.
- (b) No employer shall prohibit an employee from wearing a face covering, except to the limited extent that doing so would prevent the employee from performing an essential job function that cannot be performed while wearing a face covering.
- (c) Nothing in this article shall be construed to prohibit the use of medical or industrial face coverings, shields, or other forms of personal protective equipment which offer more protection than the face coverings otherwise required by this article.
- (d) The County will make available a standard form document that businesses or citizens can post to provide notice of the requirements in this ordinance. If needed, the County will provide access to free masks for brick and mortar small businesses who agree to implement mask requirements.

#### **Sec 18-603. Exemptions.**

- (a) No face covering shall be required:

- (1) during outdoor physical activity, provided the active person maintains a minimum a 6-foot radius from others who are not part of that person's household;
- (2) in personal vehicles;
- (3) if the use of a face covering prohibits effective communication, in which case it may be removed solely to address any immediate need to communicate and replaced thereafter, provided that appropriate social distance is observed during any such communication;
- (4) if a medical provider has advised against the use of a face covering due to an underlying medical issue or because wearing such covering presents a health, safety, or security risk;
- (5) if wearing a face covering causes or aggravates a health condition;
- (6) if wearing a face covering would prevent the receipt of personal services;
- (7) if removal of the face cloth is necessary to treat or examine a person subject to the direction of a medical professional;
- (8) when consuming food or beverages, but the face covering must be used when interacting with others not at the table, like servers;
- (9) if temporary removal of the face cloth is necessary for the purposes of verifying a person's identity for the purposes of law enforcement, purchasing alcohol, tobacco, or prescription drugs;
- (10) if a person is employed and working in their capacity as a governmental professional (i.e. public safety, fire, sanitation), or medical professional and is wearing more protective equipment or is otherwise prohibited from utilizing a face covering by the policy of their employer;
- (11) if an employer consults with an occupational safety and health professional who determines in writing that face coverings are not appropriate for employees, because of heat or other health related or safety concerns (like straps being caught in machinery or standing on a ladder); or
- (12) if wearing a mask poses a greater mental or physical health safety or security risk such as when a person has trouble breathing, is unconscious, is incapacitated, or is unable to remove the face covering without assistance.

**Sec. 18-604. Exemptions for children, childcare establishments and schools.**

- (a) Children two (2) years of age and under should not wear face coverings or mask while in a public place as the mask may pose a risk of choking, strangulation or suffocation to infants and young toddlers. Carriers and strollers with covers that allow the child to breathe comfortably are recommended as safe alternatives.
- (b) Children three (3) to eight (8) years of age are encouraged but not required to wear face coverings. Parents or guardians are responsible for ensuring the proper masking of children over the age of two years when in public places. Parents or guardians must also ensure that the face covering does not pose a health hazard for children and can be worn safely.
- (c) Parents or guardians of children eight (8) years or younger shall exercise their own discretion regarding the wearing of masks by such children.
- (d) All schools, daycares, and other child care establishments shall develop face covering policies and procedures based on guidance from public health authorities, the state department of education and the local board of education. These policies should weigh the

risks and benefits of masks to children, teachers and other employees of such establishments. Parents and guardians should be notified of such policies and procedures. Where the consistent use of face coverings or masks is not possible due to supervision of multiple children, the facility shall adhere to sanitary, hygienic and face covering practices to the maximum extent possible.

- (e) All persons other than teachers, employees and children in such establishments shall abide by the applicable provisions of this article. Teachers, children and employees shall abide by the policies developed by such establishment as delineated in this article.

#### **Section 18-605. Enforcement.**

- (a) The provisions of this article may be enforced by authorized county employees.
- (b) No person shall be arrested for a violation of this article.
- (c) Any person who does anything prohibited or fails to do anything required by this article, upon citation by an authorized county employee, and conviction of the ordinance violation in a court of competent jurisdiction, shall be subject to a fine as follows:
  - (1) Upon a first violation, every person shall be given a written warning.
  - (2) After issuance of the written warning, a person who violates the terms of this article for the second violation, shall be required to attend a COVID-19 prevention class to understand the public health ramifications of this crisis and appropriate public health responses to mitigate the spread of this disease.
  - (3) If any person fails to attend the COVID-19 prevention class as ordered by the court, then upon documentary proof of such failure to attend, the court shall have the authority to impose a fine of two hundred and fifty (250) dollars.
  - (4) At the court's discretion, repetitive failure to abide by the terms of this article, may subject a person to the general violation and penalty provisions of section 1-10 of this Code.
- (d) In addition to the fines imposed by this article, repeated violations of this article by a person who owns, manages, operates, or otherwise controls a business subject to this article, may be declared a public nuisance which may be abated by the County and may be subject to all other legal or equitable actions by the county to enforce compliance with this article. Each day of a continuing violation of this article shall be considered a separate and distinct offense.
- (e) No person shall be charged a fee for attending the COVID-19 prevention class, but if the class is offered by a private entity, that entity shall be paid a standardized amount for such instruction. The chief executive officer or designee shall promulgate policies and procedures to govern the COVID-19 prevention classes required by the terms of this article.
- (f) Any person who claims that he/she is a conscientious objector shall not be subject to enforcement by the court as provided in this article. In order to be considered as a conscientious objector, a person after citation, must file his/her sworn affidavit with the court, at a time and in a format acceptable to the court. While not required to wear a mask or subject to enforcement, conscientious objectors shall take a COVID-19 class.



- (g) All funds collected pursuant to the terms of this article, shall be dedicated to and used by the County for COVID-19 prevention.

## **PART II. EFFECTIVE DATE**

This ordinance shall become effective at 12:01 am on July 25, 2020. If so approved, this Ordinance remains in effect until repealed or modified by official action of the Governing Authority. The Board of Commissioners has advised that it will review the terms of this ordinance, if and when, the CDC or other public health official/agency has officially released statistics that the County has returned to a Level 1 watch status as that term is defined by the CDC's Global COVID-19 Pandemic Notice.

## **PART III. SEVERABILITY**

Should any section or provision of this ordinance be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the ordinance as a whole, nor any part thereof, other than the part so declared to be invalid or unconstitutional. All ordinances or resolutions, or parts thereof, in conflict with this ordinance are repealed.

**ADOPTED** by the DeKalb County Board of Commissioners, this 21st day of July, 2020.

*Steve Bradshaw*

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**STEPHEN R. BRADSHAW**  
Presiding Officer  
Board of Commissioners  
DeKalb County, Georgia

**APPROVED** by the Chief Executive Officer of DeKalb County, this 21st day of July, 2020.

*MLQ*

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**MICHAEL L. THURMOND**  
Chief Executive Officer  
DeKalb County, Georgia

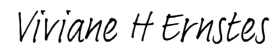
**ATTEST:**



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BARBARA H. SANDERS-NORWOOD, CCC  
Clerk to the Board of Commissioners and  
Chief Executive Officer

**APPROVED AS TO FORM:**



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VIVIANE H. ERNSTES  
County Attorney