

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARROLLTON, TEXAS, TO PROTECT THE HEALTH AND SAFETY OF PERSONS IN THE CITY BY REQUIRING STORES AND BUSINESSES TO IMPLEMENT A HEALTH AND SAFETY POLICY; PROVIDING FOR A FINE FOR VIOLATION OF CERTAIN PROVISIONS OF UP TO \$50 FOR EACH OFFENSE; PROVIDING FOR ENFORCEMENT; PROVIDING THIS ORDINANCE BE CUMULATIVE; AND PROVIDING FOR SEVERABILITY, GOVERNMENTAL IMMUNITY, INJUNCTIONS, AND AN EFFECTIVE DATE.

WHEREAS, in December 2019, a novel coronavirus, now designated COVID-19, was detected in Wuhan, China; and

WHEREAS, COVID-19 may present as an asymptomatic infection, but some symptoms of COVID-19 include fever, cough, and shortness of breath, and COVID-19 can range from mild to severe illness and in some cases death; and

WHEREAS, on January 30, 2020, the World Health Organization Director General declared the outbreak of COVID-19 as a Public Health Emergency of International Concern advising countries to prepare for the containment, detection, isolation and case management, contact tracing and prevention of onward spread of the disease; and

WHEREAS, on March 5, 2020, the World Health Organization Director General urged aggressive preparedness and activation of emergency plans to aggressively change the trajectory of this epidemic; and

WHEREAS, on March 11, 2020, the World Health Organization declared COVID-19 a worldwide pandemic; and

WHEREAS, the Centers for Disease Control and Prevention is closely monitoring the number of COVID-19 cases in the United States; and

WHEREAS, Dr. Anthony Fauci, the United States' top infectious disease expert, recommended the institution of stay-at-home orders in order to save human life and prevent further transmission of COVID-19; and

WHEREAS, gatherings of unidentifiable individuals without necessary mitigation for the spread of infection may pose a risk of the spread of infectious disease; and

WHEREAS, COVID-19 spreads between people who are in close contact with one another through respiratory droplets produced when an infected person coughs, sneezes; or otherwise transmits respiratory droplets and

WHEREAS, the continued worldwide spread of COVID -19 presents an imminent threat of widespread illness, which requires emergency action; and

WHEREAS, Governor Greg Abbott issued a State of Disaster for all Texas counties for COVID-19 on March 13, 2020; and

WHEREAS, President Donald Trump declared a State of National Emergency for the United States of America on March 13, 2020; and

WHEREAS, on March 19, 2020, John W. Hellerstedt, M.D., the Commissioner of the Texas Department of State Health Services, in accordance with Section 81.082(d) of the Texas Health and Safety Code, declared a state of public health disaster for the entire State of Texas for the first time since 1901; and

WHEREAS, on April 17, 2020, Texas State Governor Greg Abbott issued some revisions to Executive Order No. GA-14, through GA-15 and GA-16, to further reduce the spread of COVID-19 within the State of Texas, while allowing the easing of restrictions for specified businesses; and

WHEREAS, pursuant to Texas Government Code Section 418.108, Dallas County Judge Clay Jenkins issued a Declaration of Local Disaster for Public Health Emergency on March 12, 2020 due to the disease COVID-19; and

WHEREAS, Governor Greg Abbott, on April 17, 2020, suspended Section 418.101S(b) and 418.108 of the Texas Government Code, Chapter 81, Subchapter E of the Texas Health and Safety Code, and any other relevant statutes to the extent necessary to ensure that local officials do not impose restrictions in response to the COVID-19 disaster that were inconsistent with the Governor's executive orders;

WHEREAS, Governor Greg Abbott, on or about April 27, 2020, expressed that local officials cannot require individuals to wear face masks to ensure that individual liberty is not infringed upon by government; and

WHEREAS, on April 27, 2020, Governor Abbott issued an Executive Order reopening certain businesses in Texas for in-person services so long as certain workplace safety rules are followed;

WHEREAS, on June 16, 2020, Dallas County Judge Clay Jenkins issued a Supplemental Order on Continuing Requirements After Expiration of Stay Home, Stay Safe;

WHEREAS, there currently still exists a declaration of public health disaster in and for the State of Texas as declared by Governor Greg Abbott and the Texas Department of State Health Services (DSHS); and

WHEREAS, Governor Greg Abbott, on June 17, 2020, stated that local governments can require stores and businesses to require masks; and

WHEREAS, the transmission of COVID-19 has not dissipated but remains a significant threat to the health and safety of the City of Carrollton community and rates of infection are

increasing at an alarming exponential rate and the number of people ending up in the hospital, ICU, or on ventilators is also dramatically rising despite efforts by local authorities to control the spread; and

WHEREAS, Sections 121.003 and 122.006 of the Texas Health and Safety Code provide that the City of Carrollton is authorized to adopt rules to protect the health of persons in the City of Carrollton; and

WHEREAS, the City Council finds that it is in the public interest to authorize additional measures as described herein pursuant to the Texas Disaster Act of 1975, as amended, Texas Government Code and other law, and to provide rules to protect the health of persons in the City pursuant to the Texas Health and Safety Code, as amended;

WHEREAS, this Ordinance is necessary to protect the lives, health, welfare, and safety of the City's residents and businesses from the devastating impacts of this pandemic;

WHEREAS, it is the intent of this Ordinance to remain consistent with and to harmonize, to the extent possible, the executive orders of Governor Greg Abbott (as extended or modified); and

WHEREAS, the City of Carrollton is authorized to take such actions as are necessary in order to protect the health, safety and welfare of the citizens of Carrollton by ordinance as necessary so long as such action is consistent with Governor Abbott's executive orders; and

WHEREAS, unless the actions as herein provided are immediately initiated, avoidable serious illness and deaths could occur;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CARROLLTON, TEXAS, THAT:

SECTION 1.

The above and foregoing premises are found to be true and correct and are incorporated herein and made a part hereof for all purposes.

SECTION 2.

Pursuant to Sections 121.003 and 122.006 of the Texas Health and Safety Code, this Ordinance adopts the following:

(A) HEALTH AND SAFETY POLICIES & PENALTY FOR VIOLATION

1. All commercial entities within the territorial limits of the City of Carrollton that provide goods or services directly to the public must develop and implement a health and safety policy ("Health and Safety Policy").

2. The Health and Safety Policy must require, at a minimum, that all employees or visitors to the commercial entity's business premises or other facilities wear face coverings in an area or while performing an activity that may involve close contact or proximity to co-workers or the public where six feet (6') of separation is not feasible.
3. The Health and Safety Policy required to be developed and implemented by this Ordinance may also include the implementation of other mitigating measures designed to control or reduce the transmission of COVID-19 such as temperature checks or health screenings.
4. Commercial entities must post the Health and Safety Policy required by this Ordinance in a conspicuous location sufficient to provide notice to employees and visitors of all health and safety requirements.
5. The Health and Safety Policy required by this Ordinance must be developed, implemented, and posted in accordance with this Ordinance within five (5) calendar days following the Effective Date of this ordinance.
6. A violation of this Section A. may result in a fine not to exceed \$50.00 for each violation that exists and for each day a violation exists.
7. For purposes of this Ordinance, the term commercial entities shall include any corporation, partnership, limited partnership, proprietorship, sole proprietorship, firm, enterprise, franchise, or association that establishes, conducts or performs a commercial activity in the City of Carrollton including restaurants, retail establishments, and any other establishment providing goods or services for compensation.

(B) FACE COVERINGS

1. Any person ten (10) years old or older shall wear a face covering over their nose and mouth when:
 - a. in an indoor public place except where a distance of six feet (6') is maintained,
 - b. any public place where it is difficult to keep six feet away from other people, or
 - c. working in areas that involve close proximity with other co-workers or the public.
2. The Centers for Disease Control and Prevention advises face coverings for people two (2) years old or older.

3. Face coverings may include homemade masks, scarfs, bandanas or a handkerchief provided that they are sufficient to cover the mouth and nose

IT IS STRONGLY RECOMMENDED THAT PEOPLE NOT OBTAIN OR WEAR MEDICAL MASKS OR N-95 RESPIRATORS AS THEY ARE A NEEDED RESOURCE FOR HEALTH CARE PROVIDERS AND FIRST RESPONDERS. Healthcare workers and first responders must have priority access to medical masks and other personal protective equipment.

(C) EXCEPTIONS FOR FACE COVERINGS

Face coverings are not required to be worn in the following circumstances:

1. When exercising outside or engaging in physical activity outside and a distance of at least six feet from other individuals is maintained;
2. While driving alone or with passengers who are part of the same household as the driver;
3. When doing so poses a greater mental or physical health, safety or security risk than wearing a mask;
4. While pumping gas or operating outdoor equipment and a distance of at least six feet from other individuals is maintained;
5. While in a building or at an activity that prohibits the wearing of a mask due to security surveillance or screening, for example, banks; or
6. When consuming food or drink.

(D) Consistent with Executive Order GA-26 issued by Governor Greg Abbott, no civil or criminal penalty will be imposed on individuals for failure to wear a face covering.

SECTION 3.

The City Manager, or her designee, is authorized to administer, implement, and enforce the provisions of this Ordinance. Any powers granted to, or duties imposed upon the City Manager or her designee, may be delegated by her to a designated city official, the Carrollton Police Department, Carrollton Fire Rescue, code enforcement, and other city personnel or authorized representatives.

SECTION 4.

This Ordinance shall take effect at 11:59 pm on July 7, 2020, unless otherwise provided by law, and shall be in effect until September 1, 2020 at 12:01 am.

SECTION 5.

Any person, firm, corporation, agent, or employee thereof who violates any of the provisions of Subsection A of Section 2. of this Ordinance commits an offense that is considered a Class C misdemeanor and each day the violation continues shall be a separate offense punishable by a fine of not more than \$50. A culpable mental state is not required for the commission of an offense under this ordinance and need not be proved. The penalty provided for in this Ordinance is in addition to any other remedies that the City may have under City ordinances and state law.

SECTION 6.

All of the regulations provided in this Ordinance are hereby declared to be governmental and for the health, safety, and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of the Ordinance, acting for the City of Carrollton in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

SECTION 7.

Any violation of this Ordinance can be enjoined by a suit filed in the name of the City of Carrollton in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this Ordinance or in the Code of the City of Carrollton.

SECTION 8.

This Ordinance shall be cumulative of all other ordinances of the City, and shall not repeal any of the provisions of those ordinances except in those instances where the provisions of those ordinances are in direct conflict with the provisions of this Ordinance; provided, however, that any complaint, notice, action, cause of action, or claim which prior to the effective date of this Ordinance has been initiated or has arisen under or pursuant to such other ordinance(s) shall continue to be governed by the provisions of that ordinance or those ordinances, and for that purpose that ordinance or those ordinances shall be deemed to remain and shall continue in full force and effect.

SECTION 9.

The sections, paragraphs, sentences, phrases, clauses and words of this Ordinance are severable, and if any section, paragraph, sentence, phrase, clause or word in this Ordinance or application thereof to any person or circumstance is held invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Ordinance, and the City Council hereby declares that it would have passed such remaining portions of this Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

SECTION 10.

This Ordinance shall take effect immediately upon its adoption and publication in accordance with and as provided by law and the City Charter.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Carrollton, Texas, on this the 7th day of July, 2020.

CITY OF CARROLLTON, TEXAS

Kevin W. Falconer, Mayor

ATTEST:

Laurie Wilson, City Secretary

APPROVED AS TO FORM:

Meredith A. Ladd
City Attorney