Town of Melbourne Beach

# EMERGENCY ORDER NO. 2020-06

AN EMERGENCY ORDER OF THE TOWN OF MELBOURNE BEACH, BREVARD COUNTY, FLORIDA, REQUIRING FACE COVERINGS AT ALL INDOOR TOWN FACILITIES TO MINIMIZE THE SPREAD OF COVID-19; MAKING LEGISLATIVE FINDINGS OF EMERGENCY AND SUPPORTING THE WEARING OF FACE COVERINGS AS AN EFFECTIVE MEASURE AGAINST THE SPREAD OF COVID-19; PROVIDING FOR FACE COVERING REQUIREMENTS; PROVIDING FOR EXCEPTIONS; PROVIDING FOR PENALTIES; PROVIDING FOR SUNSET; PROVIDING FOR SEVERABILITY, CONFLICTS AND EFFECTIVE DATE.

WHEREAS, Governor DeSantis issued Executive Order No. 20-51 on March 1, 2020 directing the Florida Department of Health to issue a Public Health Emergency; and

WHEREAS, the State of Florida Surgeon General and State Health Officer declared on March 1, 2020 that a public health emergency exists in the State of Florida as a result of COVID-19; and

WHEREAS, Governor DeSantis issued Executive Order No. 20-52 on March 9, 2020 declaring a state of emergency for the entire State of Florida as a result of COVID-19; as extended by Executive Order No. 20-113 and Executive Order No. 20-166; and

WHEREAS, President Donald J. Trump and the Centers for Disease Control and Prevention ("CDC") issued the 15 Days to Slow the Spread guidance on March 16, 2020 advising individuals to adopt far-reaching social distancing measures, and avoiding gatherings of more than 10 people; and

WHEREAS, Governor DeSantis issued Executive Order No. 20-68 on March 17, 2020, in partial response to information reflecting individuals were not adhering to the CDC's social distancing measures and gathering limitations; and

WHEREAS, between March 17, 2020 and the date hereof, Governor DeSantis issued several Executive Orders placing numerous restrictions on individuals and businesses in response to the Statewide level and threat of the COVID-19 virus; and

WHEREAS, President Donald J. Trump updated and extended the previously issued 15 Days to Slow the Spread guidance on March 31, 2020, renamed it 30 Days to Slow the Spread, and along with the White House Coronavirus Task Force urged Americans to continue to adhere to the guidelines and expand community mitigation efforts; and

WHEREAS, the Town of Melbourne Beach ("the Town") adopted a Proclamation declaring a Civil Emergency/State of Local Emergency ("the Proclamation") on March 18, 2020 declaring a local state of emergency for the Town regarding the COVID-19 emergency; and

WHEREAS, as part of the Proclamation, the Town authorized the exercise of its authority and powers regarding the COVID-19 emergency to be exercised under the direction of the Mayor to the extent necessary to protect the public health, safety and welfare and the best interests of the Town, and

WHEREAS, on April 29, 2020, Governor DeSantis issued Executive Order #20-112 as modified by Executive Order #20-120 on May 9, 2020, and Executive Order #20-123 on May 14, 2020, in response to the recommendations set forth in Phase One of the Plan issued by the Task Force to Re-Open Florida, and adopted a phased approach to remove or decrease certain restrictions imposed pursuant to the Executive Order #20-91, Safer-At-Home Order; and

WHEREAS, on June 3, 2020, Governor DeSantis issued Executive Order #20-139, moving all counties in Florida, other than Miami-Dade, Broward, and Palm Beach counties, into Phase Two issued by the Task Force to Re-Open Florida, which order supersedes Executive Order #20-91, the Safer-At-Home Order, and supersedes in part, and extends and modified, other provisions of Executive Order 20-112; and

WHEREAS, guidance released by the CDC on June 15, 2020 states that (i) the COVID-19 virus is mostly spread by respiratory droplets released when people cough, sneeze and talk and (ii) that a person can get COVID-19 by touching a surface or object that has the virus on it and then by touching their mouth, nose or possibly their eyes. This guidance goes on to state that "personal prevention practices (such as staying home when sick, social distancing, wearing a cloth face covering, and handwashing) and environmental prevention practices (such as cleaning and disinfection) are important are important ways to prevent the spread of COVID-19; and

WHEREAS, the CDC has expressly found that "COVID-19 spreads mainly from person to person through respiratory droplets produced when a person coughs, sneezes

or talks. These droplets can land on the mouths or noses of people nearby and possibly inhaled into the lungs. Studies and evidence on infection control report that these droplets usually travel around 6 feet (about "2 arms' length"); and

WHEREAS, the CDC therefore specifically recommends that as businesses and communities reopen, and people resume their daily activities, people should wear face coverings to slow the spread of COVID-19 particularly in "pubic settings where other social distancing measures are difficult to maintain"; and

WHEREAS, on June 20, 2020, the State of Florida Surgeon General, Scott A. Rivkees, M.D., issued a Public Health Advisory recommending the wearing of face coverings in any setting where social distancing is not possible, except under certain circumstances; and

WHEREAS, Sections 876.12 through 876.15 of the Florida Statutes, make it unlawful to wear a mask, however, pursuant to Section 876.155, Florida Statutes, this prohibition of mask wearing only applies when there is also evidence that there is an intent to intimidate other people, deprive them equal protection under the law, or engage in criminal conduct; and

WHEREAS, based on the information provided by the Florida Department of Health in Brevard County, and updated daily, the COVID-19 cases in the Town of Melbourne Beach has been rising substantially since the re-opening of the State of Florida; and

WHEREAS, based on the advice of medical professionals, the number of COVID-19 cases will continue to rise unless measures are instituted to stop the spread of the COVID-19 virus; and

WHEREAS, the Town Commission resolves that it is in the best interest of the residents of the Town of Melbourne Beach and it is the furtherance of the public health, safety, and welfare, to formally adopt this Order to require face coverings in indoor Town owned and operated facilities as specified herein on an emergency basis in accordance with Chapter 16 of the Town of Melbourne Beach Ordinances.

NOW THEREFORE BE IT ENACTED BY AN EMERGENCY ORDER BY THE TOWN COMMISSION OF THE TOWN OF MELBOURNE BEACH, FLORIDA, as follows:

**Section 1**. The above recitals are adopted by the Town Commission as legislative findings.

**Section 2.** ***Definitions.***

"Face Covering" shall mean a uniform piece of material that securely covers a persons' nose and mouth and remains affixed in place without the use of one's hands, whether store-bought or homemade, concurrent with CDC guidelines.

"Social Distancing" shall mean keeping space between yourself and other people by staying at least 6 feet (or approximately 2 arms' length) from other people.

**Section 3.** ***Face Coverings Required.***

(a). Every Person living, working, or visiting the Town of Melbourne Beach shall wear a face covering in every indoor Town owned and operated facility.

**Section 4.** ***Exceptions.***

(a) Persons under the age of 6 years old; or
(b) Persons observing social distancing under the CDC guidelines; or
(c) Persons for whom a face covering would cause impairment due to an existing health condition; or
(d) Persons working in a business or profession who do not have contact with other people; or
(e) Persons working in a business or profession who maintain continuous social distancing from another person; or
(f) Persons working in a business or profession where working with a face covering would prevent them from performing the duties of the business or profession; or
(g) Persons exercising while maintaining social distancing; and
(h) Persons eating or drinking; or
(i) Public safety, fire, and other life safety and public health personnel, as their personal protection equipment will be governed by their respective agencies; or
(j) This requirement shall not apply when a person who is hearing impaired needs to see the mouth of someone wearing a face covering in order to communicate.

**Section 5. Penalties.**

(a). Civil Citation. Any person violating the terms of this Emergency Order and found in violation may be punished and fined up to $100.00 by the Police Department. A warning and a complimentary mask will be provided for a first offense; the fine for a

second offense shall be $50.00, and the fine for a third or more offense shall be $100.00 for each of the third and successive offense(s).

**Section 6. Severability**. In the event a court of competent jurisdiction shall hold or determine that any part of this Order is invalid or unconstitutional, the remainder of Order not be affected and it will be presumed that the Town Commission for the Town of Melbourne Beach did not intend to enact such invalid or unconstitutional provision. It shall further be assumed that the Town Commission would have enacted the remainder of this Order without said invalid and unconstitutional provision thereby causing said remainder to remain in full force and effect.

**Section 7. Conflicts**. All ordinances or parts of ordinances or orders or parts of orders in conflict herewith are hereby repealed.

**Section 8. Effective Date and Sunset**. This Emergency Order shall become effective on Friday, July 17 at 12:01 a.m., and shall sunset at 12:00 midnight on Thursday, August 20, 2020.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the Town to be affixed at Melbourne Beach, Florida, this 16th day of July, 2020.

(Seal)

Wyatt Hoover, Vice Mayor

ATTEST:

Jennifer Torres, Town Clerk