



**TOWN OF BLUFFTON
BLUFFTON TOWN COUNCIL EMERGENCY MEETING**

ELECTRONIC MEETING

Tuesday, June 30, 2020 | 2:00 PM

This meeting can be viewed on the Town of Bluffton's Facebook page
(<https://www.facebook.com/TownBlufftonSC/>)

- I. Call to Order – Mayor Sulka
- II. Pledge of Allegiance
- III. Invocation
- IV. Adoption of the Agenda
- V. Public Comment*
- VI. Formal Item Agenda:
 1. Consideration of an Emergency Ordinance of the Town of Bluffton, South Carolina, Requiring Individuals to Wear Face Coverings in Light of the COVID-19 Pandemic; and Matters Related Thereto; and Severability – Scott Marshall, Deputy Town Manager
- VII. Town Council Discussion
- VIII. Adjournment

Public Comments may be submitted electronically via the Town's website at (<https://bit.ly/TOBPublicComment>). Comments will be accepted up to 2 hours prior to the scheduled meeting start time. All comments will be read aloud for the record and will be provided to Town Council.

"FOIA Compliance – Public notification of this meeting has been published and posted in compliance with the Freedom of Information Act and the Town of Bluffton policies."

In accordance with the requirements of Title II of the Americans with Disabilities Act of 1990 ("ADA"), the Town of Bluffton will not discriminate against qualified individuals with disabilities on the basis of disability in its services, programs, or activities. The Town of Bluffton Council Chambers are ADA compatible. Any person requiring further accommodation should contact the Town of Bluffton ADA Coordinator at 843.706.4500 or adacoordinator@townofbluffton.com as soon as possible but no later than 48 hours before the scheduled event.

*Please note that each member of the public may speak at one public comment session and a form must be filled out and given to the Town Clerk. Public comment must not exceed three (3) minutes.

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TOWN COUNCIL

STAFF REPORT Executive Office



MEETING DATE:	June 30, 2020
PROJECT:	Consideration of an Emergency Ordinance of the Town of Bluffton, South Carolina, Requiring Individuals to Wear Face Coverings in Certain Circumstances in Light of the COVID-19 Pandemic; and Matters Related Thereto; and Severability
PROJECT MANAGER:	Scott M. Marshall, MPA, ICMA-CM – Deputy Town Manager

RECOMMENDATION:

Request Town Council’s consideration of the Emergency Ordinance at Attachment 1, which requires the wearing of face coverings in certain public settings and by employees of certain public establishments.

BACKGROUND:

On June 22, 2020, in response to an increasing number of positive COVID-19 tests reported by the South Carolina Department of Health and Environmental Control (SCDHEC), the City of Greenville enacted an emergency ordinance to require the wearing of face coverings in certain social situations and by employees of certain establishments who come into contact with the public in the performance of their jobs. The ordinance went into effect in Greenville on June 23, 2020. On the same day, the City of Columbia enacted a similar emergency ordinance requiring the wearing of face coverings in public settings. On June 25, 2020, the City of Charleston also passed an ordinance requiring the wearing of face coverings.

Since the adoption of these emergency ordinances, the mandated wearing of face coverings has become a topic of discussion among South Carolina political sub jurisdictions. In response to that discussion, SC Attorney General Alan Wilson issued a statement on June 24, 2020 regarding his view of whether passing such ordinances is lawful. While this statement was issued by Mr. Wilson, it should be noted that it is not an official SC Attorney General’s Opinion. The bottom line of his statement, however, is that he believes it is lawful for a municipality to pass this type of ordinance. The following is an excerpt:

“The only question before my office is whether a city can lawfully pass this type of ordinance? The short answer to that question is – yes, a city can pass this type of ordinance. Our state constitution and state laws have given cities the authority to pass these types of ordinances under the doctrine of Home Rule. The basic premise behind the Home Rule doctrine is to empower local governments (i.e., towns, cities and counties) to effectively govern themselves without interference from state government.” – SC Attorney General Alan Wilson

DISCUSSION:

The Town of Bluffton Emergency Ordinance presented for consideration at Attachment 1 is modeled largely after the Greenville emergency ordinance and contains five sections:

Section 1. Definitions.

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- a. "Face Covering" is defined as a uniform piece of cloth, fabric, or other material that securely covers a person's nose and mouth and remains affixed in place without the use of one's hands. Face Coverings include, but are not limited to, bandanas, medical masks, cloth masks, scarves, and gaiters, provided that they are worn such that they securely cover the person's nose and mouth.
 - b. "Person" as used in the context of Section 3.b. is defined as any individual associated with the business who has the control or authority and ability to enforce the requirements of the Ordinance within the business, such as an owner, manager or supervisor. "Person" may also include an employee or other designee that is present at the business but does not have the title of manager, supervisor, etc., but has the authority and ability to ensure that the requirements of this Ordinance are met while the business is open to the public.

Section 2. Requirements for Face Coverings.

- a. All persons entering a grocery store or a pharmacy in the Town must wear a face covering. A grocery store is defined as a retail establishment that primarily sells food, but may also sell other convenience and household goods; the term does not include convenience stores. The limit to grocery stores and pharmacies is due to the fact that these establishments sell essential goods such that individuals do not have a meaningful choice to decide not to shop there.
- b. All restaurants, retail stores, salons, barber shops, grocery stores, and pharmacies in the Town must require employees to wear face coverings while having interaction with the public.
- c. Exempt from the requirement to wear a face covering are those individuals who, due to age or an underlying health condition, are unable to safely wear or remove a face covering without the assistance of others.

Section 3. Penalties.

- a. Failure to comply is a civil infraction, punishable by a fine of not more than \$50.00.
- b. Each day of non-conformance is a separate and distinct offense. Repeated offenses may result in suspension or revocation of occupancy permits and/or business license, where applicable. Repeated violations may also be declared a public nuisance. **However, every effort shall be made to bring the person or business into compliance before issuing a citation.**

Section 4. Severability. If any part of the Ordinance is deemed invalid, the remaining portion(s) of the Emergency Ordinance shall remain valid.

Section 5. Effective Date; Expiration.

- a. Must be passed by a super majority of at least 2/3 of Town Council on a single reading. This means the ordinance must receive a favorable vote of no less than four out of five members of the Town Council of the Town of Bluffton.
- b. Emergency Ordinance shall be effective on July 1, 2020 at 12 noon.
- c. Emergency Ordinance is terminated when rescinded by a subsequent ordinance, or on the 61st day of enactment, whichever is sooner. This means the Emergency Ordinance, in absence of further Town Council action, would expire on August 31, 2020.

NEXT STEPS:

Pending successful adoption of the Emergency Ordinance at Attachment 1, staff will:

- Execute a public information campaign to educate applicable business establishments and the public on the requirement to wear a face covering.
- Make available for electronic distribution the signage found at Attachment 2, suitable for display in applicable business establishments.

ATTACHMENTS:

1. Emergency Ordinance of the Town of Bluffton, South Carolina, Requiring Individuals to Wear Face Coverings in Certain Circumstances in Light of the COVID-19 Pandemic; and Matters Related Thereto; and Severability.
2. Signage for electronic distribution.

EMERGENCY ORDINANCE No. 2020-_____

TOWN OF BLUFFTON, SOUTH CAROLINA

AN EMERGENCY ORDINANCE OF THE TOWN OF BLUFFTON, SOUTH CAROLINA,
REQUIRING INDIVIDUALS TO WEAR FACE COVERINGS IN CERTAIN
CIRCUMSTANCES IN LIGHT OF THE COVID-19 PANDEMIC; AND MATTERS
RELATED THERETO; AND SEVERABILITY

WHEREAS, it is well recognized that SARS-CoV-2 the virus that causes the disease COVID-19 presents a public health concern that requires extraordinary protective measures and vigilance; and

WHEREAS, on March 11, 2020, the World Health Organization declared a world-wide pandemic; and

WHEREAS, on March 13, 2020, the President of the United States declared a National Emergency for the United States and its territories in an effort to reduce the spread of the virus; and

WHEREAS, also on March 13, 2020, the Governor of the State of South Carolina (the “State”) issued Executive Order 2020-08, declaring a State of Emergency based on a determination that the COVID-19 poses an actual or imminent public health emergency for the State; and

WHEREAS, the Governor of the State has subsequently declared a continued State of Emergency in Executive Orders 2020-15 (March 28), 2020-23 (April 12), 2020-29 (April 27), 2020-35 (May 12), 2020-38 (May 27), and 2020-40 (June 11); and

WHEREAS, COVID-19 has spread across the state with the South Carolina Department of Health and Environmental Control (“SCDHEC”) confirming that localized person-to-person contact in South Carolina enables a significant risk of exposure, propagates the spread of COVID-19 infection and creates an extreme public health risk; and

WHEREAS, as of June 24, 2020, the total number of confirmed COVID-19 cases in the state of South Carolina was approximately 27,842 and the number of confirmed deaths was 683; with the number of confirmed cases in Beaufort County at 947, the number of estimated cases at 5,817, and the number of possible cases being 6,764; and

WHEREAS, the number of cases is growing rapidly, and if COVID-19 continues to spread in the Town, the number of persons relying on medical, pharmaceutical, and general cleaning supplies will increase, the private and public sector work force will be negatively impacted by absenteeism, and the demand for medical facilities may exceed locally available resources; and

WHEREAS, it is vitally important that we all work together to decrease the widespread

ATTACHMENT 1

proliferation of COVID-19 among us all now rather than suffer the unfortunate and devastating consequences later; and

WHEREAS, the Centers for Disease Control and Prevention (“CDC”) and SCDHEC advise the use of cloth face coverings to slow the spread of COVID-19; and

WHEREAS, S.C. Code § 5-7-250(d) provides that “to meet public emergencies affecting life, health, safety or the property of the people, council may adopt emergency ordinances by the affirmative vote of at least two-thirds of the members of council present. An emergency ordinance is effective immediately upon its enactment without regard to any reading, public hearing, publication requirements, or public notice requirements. Emergency ordinances shall expire automatically as of the sixty-first day following the date of enactment;” and

WHEREAS, taking measures to control outbreaks minimizes the risk to the public and contributes to the health and safety of the Town’s residents and limits the spread of infection in our community and within the healthcare delivery system; and

WHEREAS, in order to protect, preserve, and promote the general health, safety and welfare and the peace and order of the community, the Town is taking steps to try to protect the citizens and employees of the Town from increased risk of exposure; and

WHEREAS, in light of the foregoing, Council deems it proper and necessary to adopt this emergency Ordinance in order to require (a) patrons of grocery stores and pharmacies to wear face coverings while inside the store in light of the fact these establishments sell essential goods such that individuals do not have a meaningful choice to decide not to shop there and (b) all employees of restaurants, bars, retail establishments, salons, grocery stores, and pharmacies to wear face coverings at any time there is face to face interaction with the public.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BLUFFTON, SOUTH CAROLINA, in accordance with the forgoing as follows:

Section 1. Definitions.

- (a) “Face Covering” means a uniform piece of cloth, fabric, or other material that securely covers a person’s nose and mouth and remains affixed in place without the use of one’s hands. Face Coverings include, but are not limited to, bandanas, medical masks, cloth masks, scarves, and gaiters, provided that they are worn such that they securely cover the person’s nose and mouth.
- (b) For the purposes of Section 3(b) of this Ordinance, “person” shall be defined as any individual associated with the business who has the control or authority and ability to enforce the requirements of the Ordinance within the business, such as an owner, manager or supervisor. “Person” may also include an employee or other designee that is present at the business but does not have the title of manager, supervisor, etc., but has the authority and ability to ensure that the requirements of this Ordinance are met while the business is open to the public.

ATTACHMENT 1

Section 2. Requirements for Face Coverings.

- (a) All persons entering a grocery store or pharmacy in the Town must wear a face covering while inside the establishment. For purposes of this Ordinance, the term grocery store shall mean a retail establishment that primarily sells food, but may also sell other convenience and household goods; the term does not include a convenience store. The business shall not have responsibility for enforcing this requirement, but shall post conspicuous signage at all entrances informing its patrons of the requirements of this section.
- (b) All restaurants, retail stores, salons, barber shops, grocery stores, and pharmacies in the Town must require their employees to wear a face covering at all times while having face to face interaction with the public.
- (c) Any person who is unable to safely wear a face covering due to age, an underlying health condition, or is unable to remove the face covering without the assistance of others is exempt from this Ordinance.

Section 3. Penalties.

- (a) A person who fails to comply with Section 2.(a) or Section 2.(b) of this Ordinance shall be guilty of a civil infraction, punishable by a noncriminal fine of not more than \$50.00. No state assessments will be assessed on this civil infraction/noncriminal fine.
- (b) Each day of a continuing violation of this Ordinance shall be considered a separate and distinct offense. In addition to the fines established by this section, repeated violations of this Ordinance by a person who owns, manages, operates or otherwise controls a business subject to this Ordinance may, subject to all procedural protections set forth in the Town Code of Ordinances, result in the suspension or revocation of any occupancy permit or business license issued to business where the repeated violations occurred. Repeated violations of this Ordinance are additionally hereby declared to be a public nuisance, which may be abated by the Town by restraining order, preliminary and permanent injunction, or other means provided for by the Town Code of Ordinances and laws of this state. The foregoing notwithstanding, every effort shall be made to bring the business into voluntary compliance with the terms of this Ordinance prior to the issuance of any citation.
- (c) The Town of Bluffton Municipal Court shall have jurisdiction on any and all infractions and/or suspension/revocation of permits or licenses as set out in this Section 3.

Section 4. Severability. If any provision, clause, sentence or paragraph of this Ordinance or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of this Ordinance which can be given effect without the invalid provisions or application, and to this end the provisions of this

ATTACHMENT 1

Ordinance are declared to be severable.

Section 5. Effective Date; Expiration. The provisions hereof shall be adopted upon a single hearing and two-thirds vote of the Governing Body, and shall be effective at noon on July 1, 2020, and shall be terminated by the issuance of another ordinance or shall automatically expire on the 61st day after enactment of this Ordinance, whichever date is earlier.

DONE, RATIFIED AND ENACTED AS AN EMERGENCY ORDINANCE BY THE TOWN COUNCIL OF THE TOWN OF BLUFFTON, SOUTH CAROLINA, AT AN EMERGENCY MEETING, and approved at a meeting duly assembled by no less than an affirmative vote of two-thirds of the members of the Governing Body present, on this 30th day of June, 2020.

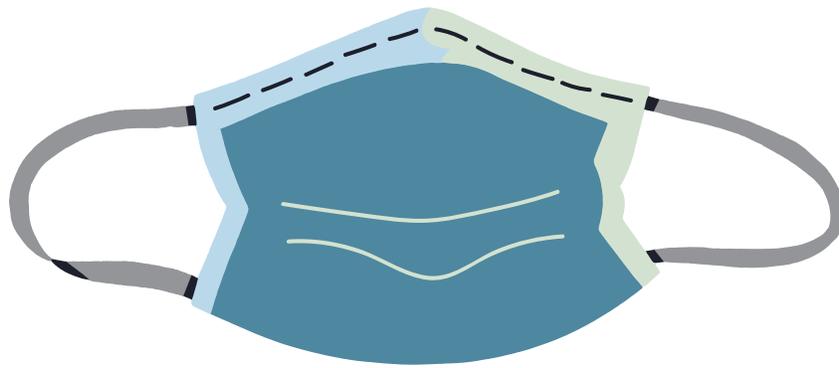
Lisa Sulka, Mayor
Town of Bluffton, South Carolina

ATTEST:

Kimberly Chapman, Town Clerk
Town of Bluffton, South Carolina

ATTACHMENT 2

PER TOWN OF BLUFFTON ORDINANCE

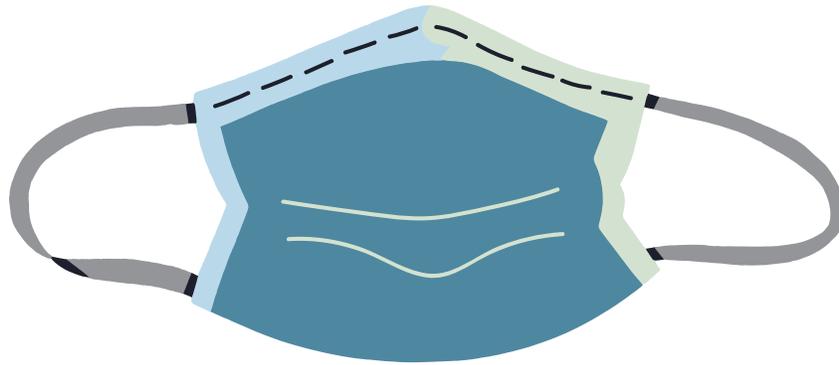


OUR
EMPLOYEES
WEAR MASKS

bluffton
HEART OF THE LOWCOUNTRY™

ATTACHMENT 2

PER TOWN OF BLUFFTON ORDINANCE



MASKS REQUIRED

**IN GROCERY STORES
AND PHARMACIES**

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