

CITY OF CLEMSON ORDINANCE CC-2021-19

AN EMERGENCY TEMPORARY ORDINANCE REQUIRING FACE COVERINGS IN ESSENTIAL INDOOR LOCATIONS OPEN TO THE PUBLIC AND IN SCHOOLS, PRE-SCHOOLS, KINDERGARTENS, AND DAY CARES WITHIN THE CITY.

WHEREAS, the State of South Carolina and Pickens County are experiencing a sharp, ongoing surge in transmission of the SARS-CoV-2 virus, and of the Delta variant in particular, as indicated by key indicators and statistics reported by the Department of Health and Environmental Control (DHEC); and,

WHEREAS, developing science concerning the Delta variant shows that it causes more infections and spreads faster than the earlier forms of the virus, and that even fully-vaccinated persons may be infected and spread the virus to others; and,

WHEREAS, Pickens County (as of August 17, 2021) has a virus transmission rate in the HIGH (>200 per 100,000) range, with a incidence rate of 1017 per 100,000, which is the highest rate of all counties in the State; and,

WHEREAS, as of August 17, 2021, only 46% of South Carolina residents aged 12 and up are reported as fully vaccinated, and it appears that the 29631 zip code vaccination rate lags behind that rate; and,

WHEREAS, currently, children under 12 years of age residing in and/or visiting the City are among the most vulnerable to infection, as they cannot yet be vaccinated; and,

WHEREAS, the Centers for Disease Control (CDC) issued August 5, 2021, Guidance for COVID-19 Prevention recommending universal masking for all students (age 2 and older), staff, teachers, and visitors to K-12 schools, regardless of vaccination status; and,

WHEREAS, on July 29, 2021, DHEC released guidance stated that it “strongly recommends mask use for all people when indoors in school settings;” and,

WHEREAS, the American Academy of Pediatrics recommended on July 19, 2021, that “everyone older than 2 wear masks, regardless of vaccination status” in order “to make schools safe for all students, teachers, and staff;” and,

WHEREAS, after 9 days of in-person instruction, the Pickens County School District posted on August 17, 2021, that 169 students and 26 employees tested positive, 618 (634 on 8/13) students and 60 employees were quarantined, 4 employees and one student were hospitalized, and two employees were on ventilators; and,

WHEREAS, S.C. Code Ann. §5-7-30 confers on each municipality the authority to exercise powers in relation to public health; and,

WHEREAS, S.C. Code Ann. §5-7-250 authorizes municipalities to enact temporary emergency ordinances to meet public emergencies affecting life, health, and safety; and,

NOW THEREFORE, BE IT ORDAINED AND ENACTED by the City Council of the City of Clemson, South Carolina, duly assembled and with a legal quorum, as set forth below.

A. Emergency

The ongoing resurgence of the virus and the rapid spread of the Delta variant have created a serious public emergency in our City, threatening the health, safety, and lives of residents and visitors, and particularly threatening the most vulnerable persons in our community. Failure to act at this time will result in continued unchecked transmission of the virus, and serious harm to public health, safety, and welfare.

B. Wearing of Face Coverings Required Indoors in Essential Locations Open to the Public

Face coverings must be worn by all persons 2 years and older who are not otherwise exempted herein when indoors in essential locations open to the public. Essential locations open to the public include:

- Grocery stores, including retail stores containing groceries for sale, produce stands, and convenience stores;
- Pharmacies;
- All medical and dental facilities, including, but not limited to, locations providing urgent care, chiropractic, audiology services, optometric services, rehabilitation and/or therapy, as well as, home health services provided at residences; assisted living facilities; senior daycares; and nursing facilities;
- Banks, unless there are working drive-thru and/or ATM options for contact-free service (not just on-line services, as not everyone has access to and familiarity with online banking);
- All City-owned and/or occupied buildings, as well as buildings leased by and/or let out by the City;
- CATbus, Senior Solutions, and all other publicly-funded transport; and,
- Taxies and ride-shares when transporting persons under 12 years old or persons medically unable to wear face coverings.

C. Nonessential Locations

Non-essential locations open to the public include, but are not limited to, bars and restaurants, non-grocery retail stores, gyms, home-improvement stores, and non-medical professional offices, as people are not required to patronize them in person as a necessary part of daily life during the pandemic. However, the use of masks, social distancing, ventilation, and hand sanitizing/washing is strongly

encouraged indoors at nonessential locations open to the public in order to protect both staff and customers, especially where children under 12 may be present. Owners and operators of nonessential locations are reminded that, because children cannot be vaccinated, they not only may be at risk of contracting the virus, but may also transmit the virus.

Similarly, attendance at social gatherings is nonessential, as people are not required to attend gatherings as a necessary part of daily life during the pandemic. The use of masks, social distancing, ventilation, and hand sanitizing/washing is strongly encouraged at all indoor gatherings of persons from different residences, and at all outdoor gatherings where social distancing cannot be consistently maintained.

All nonessential locations open to the public may implement and enforce any and all legally allowed requirements intended to limit transmission of the virus; this ordinance does not prohibit such precautions, nor does it prohibit such locations from advertising their efforts at protecting customers and employees from transmission.

D. Schools, Pre-schools, Kindergartens, and Day Cares

Budget Proviso 1.108 reads:

1.108. (SDE: Mask Mandate Prohibition) No school district, or any of its schools, may use any funds appropriated or authorized pursuant to this act to require that its students and/or employees wear a facemask at any of its education facilities. This prohibition extends to the announcement or enforcement of any such policy.

Applying the analysis and reasoning used by the South Carolina Supreme Court in Creswick v. The University of South Carolina and Alan Wilson, Op. 28053 (August 17, 2021), Proviso 1.108 prohibits ***school districts and schools*** from using any 2021-22 state funds to require, announce, or enforce the wearing of facemasks for students and/or employees at school facilities. The proviso does not mention municipalities, municipal ordinances, or funding from other sources and/or announcing/requiring/enforcing of facemask requirements by any other entity. Therefore, the clear and unambiguous language of the proviso does not prohibit municipal exercise of the powers provided by S.C. Code Ann. §5-7-250 to enact, announce, fund, require, and enforce facemask requirements within municipal borders.

Accordingly, all persons aged 2 years and older, unless otherwise exempt herein, present for any reason at any public or private school, pre-school, kindergarten, or day care within the City must wear a face covering while indoors and/or in or on transport vehicles, such as buses, cars, trucks, or enclosed shuttles.

E. “Face covering”

A face covering is a device covering the nose and mouth, impeding the spread of saliva, respiratory droplets, other fluids, and air-borne disease particles. Persons are encouraged to obtain and properly wear N95 or KN95 face coverings, but medical grade face coverings are not required. Face coverings may not have exhalation valves or vents that allow virus particles to escape.

CDC’s August 13, 2021, guidance recommends face coverings that have two or more layers of washable, breathable fabric; completely cover the nose and mouth; fit snugly against the sides of the face without gaps; and, have a nose wire to prevent air from leaking out and getting in at the top of the face covering.

F. Exemptions

Face coverings are not required when:

- Actively eating or drinking;
- Alone in a private office when members of the public are not and cannot be present;
- A licensed healthcare provider has determined that wearing a face covering causes or aggravates a health condition or that there is another medical reason for not wearing a face covering;
- A person has a bona fide religious belief preventing that person from wearing a face covering;
- The face covering would prevent the receipt of medical or dental treatment or examination, for the period of time the treatment or examination is taking place;
- The face covering would prevent a person with a hearing impairment from communicating (alternate forms of communication may be used);
- Complying with instructions from law enforcement or emergency personnel;
- Identification is required for purposes of purchasing medications, tobacco, or alcohol; or,
- A person is unable to don or remove a face covering without assistance due to disability or age.

G. Funding for Schools, Pre-Schools, Kindergartens, and Day Cares, and Essential Indoor Locations Open to the Public

1. For public schools, pre-schools, kindergartens, and day cares within the City, the City will fund announcing, requiring, and enforcing the wearing of face coverings with non-State funds, and will provide face coverings for use by persons present in school facilities or on school transport who do not have their own face coverings available.
2. For private schools, pre-schools, kindergartens, and day cares in the City, along with essential indoor locations in the City that are open to the public, the City will provide face coverings upon request on a first come first served basis, as long as funding is available.

H. Enforcement at Schools, Pre-Schools, Kindergartens and Day Cares

No school district or public school within the City shall create, announce, or enforce any policy requiring face masks be worn by students and/or employees relating to this ordinance in any way.

No public school district or school within the City shall expend any funds from the South Carolina 2021-2022 Budget Appropriations Act for any action, communication, or other matter relating to this ordinance.

No public school employee shall use any paid work time or work equipment to report any need for enforcement.

No student resource officer employed by the City, but assigned to and funded in whole or in part by a public school district or school within the City, shall announce or enforce this ordinance at any school facilities.

The City is solely responsible for announcing, requiring, and enforcing this ordinance.

I. Consequences for Non-Compliance

Any person or covered entity that fails to comply with the requirements of this temporary emergency ordinance shall be guilty of a civil infraction, punishable by a fine of up to \$100, plus any applicable mandatory court costs and fees.

Each violation is considered to be a separate and distinct offense. Repeated violations by a person or entity are hereby declared to be a public nuisance that may be abated via order, injunction, or any other legal means. Such means may include, subject to all applicable procedural protections provided by law, suspension and/or revocation of City permits and/or licenses.

Parents or guardians of children, where the children knowingly and deliberately refuse to comply with the ordinance, may be warned and or cited with the civil infraction fine.

J. Effective Time Period and Severability

1. During the term of this ordinance, any resolution, policy, regulation, ordinance, practice, and/or bylaw that may conflict with the provisions hereof shall be, and is hereby, suspended and superseded.

2. Should any provision, section, paragraph, sentence, or word of this ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences, or words of this ordinance as hereby adopted shall remain in full force and effect.

3. Pursuant to S.C. Code Ann. §5-7-250(d), this emergency temporary ordinance is effective immediately upon enactment, and shall remain in effect for 60 days, at which time it shall automatically terminate on the 61st day, unless amended, extended, or terminated by Council prior to that time.

IT IS SO ORDAINED.

SIGNED, SEALED AND DELIVERED THIS _____ DAY OF AUGUST 2021.

CITY COUNCIL:

G. Robert Halfacre, Mayor

ATTEST:

Beverly Coleman, City Clerk