

CITY OF FOLLY BEACH

Tim Goodwin, Mayor



Folly Beach, SC 29439

www.cityoffollybeach.com

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Eddie Ellis, Mayor Pro Tem
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Teresa Marshall, Council Member
Amy Ray, Council Member
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City Council Special Emergency Meeting

Monday June 29th, 2020

3:00PM

21 Center Street
Council Chambers, 2nd Floor
Folly Beach, SC 29439

Special Emergency Meeting Agenda

1. CALL TO ORDER
2. **Ordinance 11-20:** An Emergency Ordinance Requiring That Face Coverings or Masks be Worn in Pubic in the City of Folly Beach.
3. ADJOURNMENT

PUBLIC NOTICE

ALL MEDIA WERE NOTIFIED PURSUANT TO STATE LAW

City Council will not vote on matters discussed during Work Sessions or Executive Sessions. However, matters discussed may be voted on during the evening City Council meeting.

In keeping with the Americans with Disabilities Act, persons needing assistance, alternative formats, ASL interpretation, or other accommodation, please contact the Municipal Clerk at 843-513-1833 during regular business hours at least 24 hours prior to the meeting. Hearing devices are available upon request for those with hearing difficulties.

The City of Folly Beach, in an effort to go green, will no longer have the Ordinances and Resolutions included in the Agenda. Citizens interested in having a copy, please see the Municipal Clerk.

WHEREAS, as reported by the South Carolina Department of Health and Environmental Control (SCDHEC), as of June 22, 2020, the total number of confirmed cases in South Carolina is 26,572, with total possible cases of 189,800. In Charleston County, the total number of reported cases is 2,251 with total possible cases of 16,079. The City of Folly Beach has 9 confirmed cases, with a total estimated cases of 64; and

WHEREAS, both South Carolina and Charleston County have had more new daily cases reported in the last week than ever reported previously. On June 19, 2020, South Carolina reported 1,159 new cases, more than ever previously reported. On June 21, 2020, Charleston County reported 214 new cases, more than ever previously reported; and

WHEREAS, many businesses located on Folly Beach have recently re-closed due to multiple employees testing positive for the virus; and

WHEREAS, citizens and visitors, particularly within the commercial district of the City and within its businesses, have had a low rate of mask usage and have infrequently engaged in voluntary social distancing and other actions designed to impede the social transmission of the virus; and

WHEREAS, the CDC and SCDHEC have repeatedly advised the use of cloth face coverings to slow the spread of COVID-19; and

WHEREAS, face coverings can decrease the spread of respiratory droplets from people, and evidence has grown, showing in numerous recent studies that the use of face coverings decreases the spread of COVID-19 within populations; and

WHEREAS, taking measures to control outbreaks minimizes the risk to the public, maintains, the health and safety of the City's residents and visitors, and limits the spread of infection in our communities and within the healthcare delivery system; and

WHEREAS, Sections 5-7-30 (the "Home Rule Statute") and 5-7-250 of the South Carolina Code of Laws, as well as the Governor's Orders, all empower Council to enact emergency ordinances affecting life, health, or safety; and

WHEREAS, the South Carolina Attorney General on June 24, 2020 has issued an opinion that municipalities are authorized to issue ordinances requiring the public use of masks; and

WHEREAS, in light of the foregoing and in order to protect, preserve, and promote the general health, safety, and welfare and the peace and order of the community, the City is taking steps to try to protect its citizens, employees, and visitors from increased risk of exposure, City Council of the City of Folly Beach deems it proper and necessary to adopt this emergency ordinance;

NOW BE IT THEREFORE ORDAINED that the following emergency procedures are hereby adopted and to remain in effect until August 25, 2020, subject to termination or extension by Council:

1. Council and the Mayor formally declare a State of Emergency due to a resurgence in known cases of COVID-19 within the City and surrounding areas. Council also confirms that the Mayor, or the Mayor Pro Tempore in his absence, can exercise the emergency powers granted to the Mayor pursuant to City of Folly Beach Ordinance § 35.05.

2. At the discretion of the Mayor, City Hall is closed and moved to a virtual, phone, and dropbox operation until further notice. The Mayor has discretion to open City Hall to transactions that are deemed safe.

3. City Council members and staff will be authorized during this State of Emergency to attend meetings of Council, boards, and committees via teleconference at their discretion.

4. The public will not be allowed to attend Council, board, or committee meetings, or any other City meetings, in person. Meetings will still be broadcast. Measures will be taken to allow the public to submit comments prior to any meeting by emails, which will be included in the public record of the meeting.

5. All deadlines imposed by City Ordinance or rule, applicable to the municipality or any applicant, shall be suspended, during this temporary period.

6. The City Administrator is authorized to develop and enact a plan in order to ensure continuity in the delivery of government services in light of the COVID-19 outbreak.

7. The City Administrator is authorized to cancel and revoke any special events permits issued prior to the date of this ordinance for events taking place until August 25, 2020.

MASK PROVISIONS

8. "Face Covering" or "mask" means a cloth, fabric, or other soft or permeable material, without holes, that securely covers both the mouth and nose and remains affixed in place without the use of one's hands. Face Coverings include, but are not limited to, medical masks, N-95 respirators, face shields, scarves, handmade masks, bandanas, and neck gaiters such that they securely cover the person's nose and mouth.

9. Every person working, living, visiting, or doing business in the City of Folly Beach is required to wear a Face Covering while in any indoor or outdoor public place. This includes but is not limited to:

- a. Inside a building open to the public;
- b. Waiting to enter a building open to the public;

- c. Interacting with other people in outdoor spaces, including, but not limited to, curbside pickup, delivery, and service calls; and
- d. Walking in public where maintaining a distance of six (6) feet between other members of public at all times is not possible.

10. The following persons are excepted from the Face Covering requirement:

- a. Persons under the age of three years old; or
- b. Persons for whom a face covering would cause impairment due to an existing health condition or disability; or
- c. Persons in personal vehicles; or
- d. Persons while outside and while maintaining a minimum of six (6) feet from other people, other than members of their household, at all times; or
- e. Customers in a restaurant or bar while actively eating or drinking so long as they maintain a minimum of six (6) feet from other persons in the establishment, other than members of their households. The server and other front of the house staff must wear a Face Covering during these interactions; or
- f. Persons alone or with members of their household in an enclosed space.
- g. Persons acting in compliance with directions of law enforcement officers.

11. Businesses are responsible for enforcing this Emergency Ordinance and subject to the penalties included herein for violations occurring inside of their business, including outdoor areas, and in public areas wherein customers are dining, eating, or waiting to be served or seated.

- a. Businesses must require all employees to wear a Face Covering at all times.
- b. Businesses are required to post a notice in their business visible to customers entering the business or waiting to enter the business informing customers that the use of Face Coverings by customers and employees is mandated by law. Failure to post such a notice is a violation of this Emergency Ordinance.
- c. If a customer refuses to comply with the Emergency Ordinance and refuses to vacate the business and is not covered by one of the exemptions, the business shall promptly notify a Public Safety Officer or the Folly Beach Public Safety Dispatch office. If a business complies with this provision by posting the notice and informing Public Safety of a failure to comply, the business will not be in violation of this Emergency Ordinance as a result of the action of the noncomplying customer.
- d. If a customer is excluded from requiring a Face Covering pursuant to Section 4 of this Emergency Ordinance, the business may choose to offer curbside service, provide home delivery, or use some other reasonable measure to deliver its goods or services.
- e. Businesses are strongly encouraged to follow all CDC and industry guidelines on face coverings, social distancing, occupancy, and sanitation procedures.

Businesses are encouraged to not hold any events that may create situations where occupancy limits are exceeded or social distancing is not possible.

12. Any failure to comply with this Emergency Ordinance, including efforts to circumvent this ordinance, may be penalized a) as a civil infraction fine of \$100.00. Each day of a continuing violation shall be considered a separate and distinct offense. Such infractions may be issued by the City’s licensing official, code enforcement officers, or public safety officers. Appeals of such infractions shall be heard by the City’s hearing officer in accord with the provisions of Section 110.18, or b) in addition to the fines of established in this section, repeated violations of this Emergency Ordinance by a licensed business may result in suspension or revocation of the business license pursuant to provisions of Section 110.17 of the City of Folly Beach Code of Ordinances, or c) as a violation of S.C. Code Section 16-7-10 (Illegal acts during state of emergency, or d) any other penalties provided by City or State law, including penalties granted pursuant to Executive Orders issued by the South Carolina Governor. In addition, the Governor has authorized cities to seek an injunction, mandamus, or other appropriate legal action in the courts of the State to enforce orders.

13. During the term of this Emergency Ordinance, any ordinance, resolution, policy, or bylaw of the City that conflicts with the provisions hereof shall be and is hereby suspended and superseded.

14. Should any provision, section, paragraph, sentence or word of this Emergency 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 Emergency Ordinance as hereby adopted shall remain in full force and effect.

15. This Emergency Ordinance shall take effect at noon the day after its adoption by City Council.

16. All measures taken herein are subject to modification, repeal, or additional restrictions as required by changes in the pandemic, including increased incidence, rate of spread in the Charleston region, and rate of compliance.

17. This emergency ordinance shall be terminated or extended by the issuance of another ordinance or shall automatically expire on August 25, 2020.

AMENDED AND ADOPTED this 29th day of June 2020, at Folly Beach, South Carolina.

Ayes: _____

Nays: _____

Abstains: _____

Municipal Clerk

Tim Goodwin, Mayor

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ATTORNEY GENERAL WILSON'S STATEMENT ON LOCAL MASK ORDINANCES



(COLUMBIA, S.C.) – June 24, 2020 – My office has recently received a number of calls regarding the city ordinances passed by Greenville and Columbia that concern the wearing of masks within those cities' jurisdictions and under certain conditions. I want to provide a general answer to this issue.

Before I provide the answer I want to make it perfectly clear that our office is not endorsing, defending or even attacking these ordinances.

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. There are limits to this power.

One limit to this power would be if the S.C. General Assembly were to preempt a city from passing an ordinance through some state law or specifically prohibit a city from passing an ordinance through some state law. For example, it is our position that a city cannot pass its own gun laws because a state law specifically preempts this action. However, in this case there is no state law that preempts or prohibits a city from passing this particular ordinance.

Another limitation on cities passing these kinds of ordinances is that the ordinance cannot be arbitrary or capricious. In other words, if there were no COVID 19 pandemic or public health emergency going on a court might find the requirement to wear a mask arbitrary. That is not the case here.

If there was a riot (as there was a few weeks ago) a city could pass a curfew to get control of the civil unrest. A city could require a mandatory evacuation in the event of a local flood. Normally, a city could pass an emergency order requiring people to leave an area or stay in a particular area for a period of time. An exception to this would be if the Governor issued an emergency executive order then that would preempt a city from passing a different emergency order. This was our position two months ago when cities were passing their own emergency lock-down orders after Governor McMaster issued his state of emergency order. That remains our position today.

The final limitation would be if an ordinance violated a person's constitutional rights. A city has the right to pass these ordinances and the only way to know if someone's constitutional rights have been violated by these ordinances would be on a case by case basis involving very specific facts. In other words, an otherwise lawful ordinance can be applied in a way that violates someone's rights. Based on court precedent, simply requiring someone to wear a mask at the grocery store, or stop smoking in a restaurant, or be home before curfew does not constitute a violation of rights. We would need specific facts to make that determination and we do not have those facts at this time.

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Attorney General Wilson's statement on local mask ordinances

Jun 24, 2020

(COLUMBIA, S.C.) – June 24, 2020 – My office has recently received a number of calls regarding the city ordinances passed by Greenville and Columbia that concern the wearing of masks within those cities' jurisdictions and under certain conditions. I want to provide a general answer to this issue. Before I provide the answer I want to make it perfectly clear that our office is not endorsing, defending or even attacking these ordinances. 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...

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Mount Pleasant Man Arrested on Child Sexual Abuse Material* Charges

Jun 24, 2020

(COLUMBIA, S.C.) – June 24, 2020 – South Carolina Attorney General Alan Wilson announced the arrest of Layfe Dubb Farmer, 35, of Mt. Pleasant, SC, on 10 charges connected to the sexual exploitation of minors. Internet Crimes Against Children (ICAC) Task Force investigators with the Mt. Pleasant Police Department made the arrest. Investigators with the SC Attorney General's Office, also a member of the state's ICAC Task Force, assisted with the investigation. Investigators received a CyberTipline report from the National Center for Missing and Exploited Children (NCMEC) which led them to Farmer. Investigators state Farmer possessed multiple files of child...

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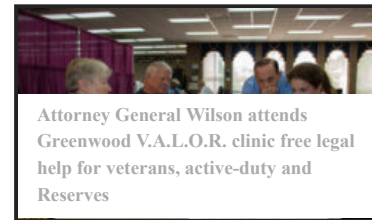
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One other issue that has been brought to our attention involves a law (Section 16-7-110) that prohibits the wearing of masks in public and how this law could subject people to prosecution for obeying a city ordinance that requires the wearing of a mask in commercial establishments. Basically, you have state law that says you cannot wear a mask and city ordinance that says you must wear a mask. It is important to understand that this law was passed in 1962 with the intention of preventing members of the Ku Klux Klan from concealing their identities while committing acts of terrorism. With that in mind, this statute, in our opinion would not be applicable to the mask ordinances because the wearer is not attempting to conceal their identity but to comply with a city health ordinance.

Any other statutes which may have been cited to this office as conflicting with the city ordinances would be reconciled by a future court as inapplicable.

Many people are upset about these ordinances and I can understand their frustration. However, just because you believe something is bad government does not make it unconstitutional government. Sometimes the remedy for a bad government action is not a legal remedy but a political remedy at the ballot box. I hope this helps people understand my position better. If I thought these ordinances were unlawful, I promise you I would be seeking a legal remedy.



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