

AN ORDINANCE FOR THE FIFTH DECLARATION OF A LOCAL STATE OF EMERGENCY RELATED TO COVID-19; AND FOR OTHER PURPOSES.

WHEREAS, Athens-Clarke County, Georgia has experienced an event of critical significance as a result of the Coronavirus (COVID-19) disease (“COVID-19”); and

WHEREAS, the Centers for Disease Control and Prevention, (the “CDC”) indicates that COVID-19 is a new and contagious respiratory disease caused by a novel (new) coronavirus that was first detected in China and which has now been detected in more than 100 locations around the world, including in the United States; and

WHEREAS, COVID-19 is officially a global pandemic according to the WHO; and

WHEREAS, COVID-19 can spread from person to person, and can result in no symptoms, minor symptoms, or serious illness causing permanent organ damage and death; and

WHEREAS, individuals age 65 or over or living with certain medical conditions identified by the CDC (members of Vulnerable Populations) and members of other populations identified by the CDC (“Other Populations at Risk”) are at risk of severe and lasting harm to health or death from COVID-19; and

WHEREAS, COVID-19 also has been reported to cause severe and permanent damage to some children; and

WHEREAS, there is no vaccine or approved treatment for COVID-19; and

WHEREAS, the CDC has noted that COVID-19 spreads very easily and sustainably when an infected person (who may not symptoms at all, or minor symptoms) talks, sneezes, or coughs in close proximity with others (within six feet); and

WHEREAS, on March 13, 2020, President Donald Trump has declared a national emergency for the United States of America in response to COVID-19; and

WHEREAS, on March 14, 2020 Governor Brian Kemp declared a Public Health State of Emergency in Georgia, and renewed his declaration on April 8, 2020, April 30, 2020, May 28, 2020, and again on June 29, 2020 so that it will remain in effect at least through August 11, 2020; and

WHEREAS, on March 16, 2020, the Mayor and Commission of the Unified Government of Athens-Clarke County, Georgia adopted an Ordinance for the Declaration of Local State of Emergency related to COVID-19;

WHEREAS, on March 19, 2020, pursuant to their authority under the Athens-Clarke County Emergency Management Ordinance, the Athens-Clarke County Mayor and Commission adopted a Second Declaration of Local Emergency activating certain emergency powers in order to allow Athens-Clarke County to quickly respond to the COVID-19 pandemic and renewed that declaration on April 21, 2020, and again on June 2, 2020; and

WHEREAS, the Governor, through Executive Orders 04.30.20.01, 05.12.20.02, 05.28.20.02, 06.11.20.01, and 06.29.20.02 has recognized the need to take extra precautions to protect certain vulnerable populations who meet the criteria for higher risk of severe illness as defined by the CDC and identified in Section III of the Governor’s Executive Order 06.29.20.02 (“Vulnerable Populations”); and

WHEREAS, Executive Orders 04.30.20.01, 05.12.20.02, 05.28.20.02, 06.11.20.01, and 06.29.20.02 required Vulnerable Populations to continue to shelter in place, with exceptions that include participating in essential services and working, through July 15, 2020; and

WHEREAS, the Mayor and Commission desire to protect individuals in said Vulnerable Populations and Other Populations at Risk in a reasonable manner and as recommended by the CDC and by the Georgia Department of Public Health, while such individuals are participating in essential services and working; and

WHEREAS, the CDC¹, Dr. Kathleen Toomey (Georgia's Commissioner of Public Health), and Governor Kemp through Executive Order 05.12.20.02, and subsequent Executive Orders, have recommend that individuals wear face coverings over the nose and mouth to mitigate the spread of COVID-19 when they are in public places where they cannot practice social distancing (i.e., stay at least six feet away from other individuals who do not share the same household); and

WHEREAS, the CDC states that wearing a face covering over the nose and mouth is a recommended precaution designed to prevent symptomatic and asymptomatic individuals who have contracted COVID-19 from spreading it to other individuals; and

WHEREAS, Dr. Toomey and Governor Kemp have modeled the behavior of wearing face coverings as examples for Georgians to follow; and

WHEREAS, according to the Georgia Department of Public Health COVID-19 update at noon on Monday, July 6th, 2020, Georgia now has _____ confirmed cases of COVID-19, including _____ confirmed cases in Athens-Clarke County; and

WHEREAS, according to the Georgia Department of Public Health COVID-19 update, _____ individuals in Georgia have died and _____ have been hospitalized after contracting COVID-19; and

WHEREAS, as indicated above, the state of Georgia remains under a state of emergency as a result of the COVID-19 pandemic; and

WHEREAS, Governor Brian Kemp has relaxed and/or removed many restrictions on businesses resulting in citizens and visitors interacting in public and commercial establishments; and

¹ CDC recommends wearing cloth face coverings in public settings where other social distancing measures are difficult to maintain (e.g., grocery stores and pharmacies), especially in areas of significant community-based transmission.

"In light of new data about how COVID-19 spreads, along with evidence of widespread COVID-19 illness in communities across the country, CDC recommends that people wear a cloth face covering to cover their nose and mouth in the community setting. This is to protect people around you if you are infected but do not have symptoms."

A cloth face covering should be worn whenever people are in a community setting, especially in situations where you may be near people. These settings include grocery stores and pharmacies. These face coverings are not a substitute for social distancing. Cloth face coverings are especially important to wear in public in areas of widespread COVID-19 illness.

Yes. Wearing cloth face coverings is an additional public health measure people should take to reduce the spread of COVID-19. CDC still recommends that you stay at least 6 feet away from other people (social distancing), frequent hand cleaning and other everyday preventive actions. A cloth face covering is not intended to protect the wearer, but it may prevent the spread of virus from the wearer to others. This would be especially important if someone is infected but does not have symptoms.

WHEREAS, the guidelines promulgated by the White House on re-opening America specifically call for a 14-day downward trajectory among other gating criteria, which guidelines are specifically incorporated by reference; and

WHEREAS, the incidence of infection and death in the territorial limits of the Unified Government of Athens-Clarke County, hereinafter referred to as "Athens-Clarke County," continues to increase signifying the continued spread of the highly contagious and deadly disease; and

WHEREAS, this continued increase is a threat to the health, safety, and welfare of the Athens-Clarke County community, especially individuals in Vulnerable Populations and Other Populations at Risk; and

WHEREAS, the number of cases is growing rapidly and if COVID-19 continues to spread in Athens-Clarke County and the surrounding communities, 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, the CDC indicates that there is evidence of widespread community transmission in Georgia; and

WHEREAS, the CDC and public health officials expect that additional cases of COVID-19 will be identified in the coming days; and

WHEREAS, the CDC advises that the use of masks or cloth face coverings will slow the spread of COVID-19, and the CDC recommendations on PPE usage are hereby incorporated by reference; and

WHEREAS, taking measures to control outbreaks minimizes the risk to the public, maintains the health and the safety of the residents of Athens-Clarke County, and limits the spread of infection in our communities and within the healthcare delivery system; and

WHEREAS, it is vitally important that we all work together to decrease the widespread proliferation of COVID-19 among us all now rather than suffer the unfortunate and devastating medical and economic consequences later; and

WHEREAS, pursuant to the authority of O.C.G.A. § 38-3-28(a), local governments are specifically empowered to enact rules and regulations as may be necessary for emergency management purposes; and

WHEREAS, O.C.G.A. § 38-3-28(a) also grants political subdivisions the power to supplement the Governor's Executive Orders; and

WHEREAS, this order is intended to be entered with due regard to the uniform principle that masks or face coverings will slow the spread of COVID-19 as contemplated by O.C.G.A. § 38-3-28(c); and

WHEREAS, this emergency order is authorized by O.C.G.A. §§ 38-3-4 and 38-3-28 and the local control provisions of Governor Kemp's Executive Order of June 29, 2020, and it is specifically intended to supplement such declaration, as amended, and should not be construed to be inconsistent therewith; and

WHEREAS, notwithstanding the foregoing, the Supreme Court of Georgia has noted that the Unified Government of Athens-Clarke County, Georgia, is neither a county nor a municipal government, but rather a "new political entity" formed in accordance with "the constitutionally-sanctioned consolidation of municipal and county governmental and

corporate powers and functions”;² and

WHEREAS, pursuant to O.C.G.A. § 38-3-51, the Governor’s declared public health emergency authorizes the Mayor and Commission to use emergency powers in O.C.G.A. §§ 38-3-1 through 38-3-64; and

WHEREAS, pursuant to O.C.G.A. § 38-3-6, during an emergency, O.C.G.A. §§ 38-3-1 through 38-3-64 are supposed to be liberally construed to effectuate their purposes; and

WHEREAS, pursuant to Section 1-104 (d) of the Charter of the Unified Government of Athens-Clarke County, Georgia, the Mayor and Commission have the right, duty, power, privilege and authority to exercise and enjoy all other powers, duties, functions, rights, privileges, and immunities necessary and proper to promote or protect the safety, health, peace, security and general welfare of said government and its inhabitants and to exercise all implied powers necessary to carry into execution all powers granted in this Charter as fully and completely as if such powers were fully enumerated herein and to do and perform all of the acts pertaining to its property, affairs and local government which are necessary or proper in the legitimate exercise of its corporate powers and governmental duties and functions; and

WHEREAS, pursuant to Sub-Sections (36) and (39) of Section 8-114 of the Charter of the Unified Government of Athens-Clarke County, Georgia, the Mayor and Commission have the following additional powers:

(17) Health: To prescribe and enforce health and sanitation standards; and

(36) Emergencies: To provide for the determination, proclamation and combatting of emergencies; and

(39) General health, safety, and welfare: To define, regulate and prohibit any act, practice, conduct or use which is detrimental to the health, sanitation, cleanliness, welfare, and safety of the inhabitants of the unified government; and

WHEREAS, the United States Supreme Court has previously held that “[u]pon the principle of self-defense, of paramount necessity, a community has the right to protect itself against an epidemic of disease which threatens the safety of its members”; and

WHEREAS, the Mayor and Commission of Athens-Clarke County, Georgia have determined that it is necessary to continue its Declaration of a Local State of Emergency; and

WHEREAS, the following actions related to requiring face coverings in public are necessary and appropriate to balance the public’s interest in being free from undue restrictions with the compelling public interest of providing for the health, safety and welfare of the residents of Athens-Clarke County and the surrounding communities, particularly those individuals who are members of Vulnerable Populations and Other Populations at Risk; and

WHEREAS, in the judgment of the Mayor and Commission of the Unified Government of Athens-Clarke County, Georgia, with advice from other subject matter experts, there exist emergency conditions as a result of COVID-19 within the geographical boundaries of the Unified Government as described in Section 1-102 of the Charter requiring extraordinary and immediate corrective actions for the protection of the health, safety, and welfare of the citizens of Athens-Clarke County and the surrounding communities;

² *Athens-Clarke County v. Walton Electric Membership Corporation*, 265 Ga. 229, 230 (1995).

NOW, THEREFORE, the Commission of Athens-Clarke County, Georgia hereby ordains and declares that a local state of emergency continues to exist within the territorial limits of the Unified Government of Athens-Clarke, County, Georgia, and shall continue until the conditions requiring this declaration are abated.

NOW, THEREFORE, because of the local state emergency ordained and declared above, the Commission of Athens-Clarke County, Georgia hereby ordains and orders the following:

SECTION 1.

The Athens-Clarke County Office of Emergency Management shall continue with its activation of the Emergency Operations Plan and that the following sections of the Code of Athens-Clarke County, Georgia, shall continue to be implemented:

- (a) Section 3-4-5 Additional Emergency Powers
- (b) Section 3-4-9. Authority to Waive Procedures and Fee Structures

SECTION 2.

Any provisions of the Alcoholic Beverages Ordinance, Chapter 6-3 of the Code of Athens-Clarke County, Georgia, prohibiting an establishment licensed to sell beer or wine on premises from selling unopened bottles, cans, or growlers of beer and wine for take-out consumption off premises shall be temporarily suspended for the duration of this local declaration. It is the intent of this order that any establishment licensed to sell beer and/or wine shall be authorized to sell unopened bottles or cans and sealed growlers of such beverages for take-out consumption off premises through the duration of the declared Local Emergency, including any extension thereof. All other provisions of the Alcoholic Beverages Ordinance not in conflict with this order shall remain in full force and effect.

SECTION 3.

That the April 1, 2020 deadline for payment of Occupation Tax and regulatory fees continue to be extended to and including August 11, 2020. Any provisions of Athens-Clarke County's Occupation Tax in conflict in with the extension granted herein are hereby temporarily suspended. All other provisions of the Occupation Tax Ordinance, Chapter 6-1 of the Code of Athens-Clarke County, Georgia, remain in full force and effect.

SECTION 4.

For the protection of members of the public, including members of Vulnerable Populations and members of other Populations at Risk, facial coverings or masks shall be required in public places within Athens-Clarke County to slow the spread of the novel coronavirus disease known as COVID-19 as follows:

(a) Definitions:

Facial covering or mask: A device to cover the nose and mouth of a person to impede the spread of saliva or other fluids during speaking, coughing, sneezing or other intentional or involuntary action. Medical grade masks are not required; coverings may be fashioned from scarves, bandanas, or other suitable fabrics. The mask must cover the mouth and nose of the wearer.

Public place: Any place other than an individual's home, including the curtilage thereof, or a personal vehicle.

(b) All persons entering a commercial establishment in Athens-Clarke County must wear a face covering or mask while inside such establishment. This requirement to wear a face covering does not apply to religious establishments; however, the use of face coverings is highly recommended during religious activity.

(c) All restaurants, retail stores, salons, grocery stores, and pharmacies in Athens-Clarke County must require their employees to wear a face covering at all times while having face-to-face interaction with the public.

(d) 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.

(e) Face coverings are not required in the following circumstances:

1. In personal vehicles;
2. When a person is alone in enclosed spaces or only with other household members;
3. During outdoor physical activity, provided the active person maintains a minimum of six (6) feet from other people with whom they do not cohabitate at all times;
4. While drinking, eating, or smoking;
5. When wearing a face covering causes or aggravates a health condition;
6. When wearing a face covering would prevent the receipt of personal services; and
7. When a person is ten (10) years of age or younger.

(f) Violations of Sub-Sections (b) and (c) of this Section 4 may be enforced by a notice of ordinance violation issued by any police officer, code enforcement officer, or other authorized law enforcement official as provided below:

1. A person who fails to comply with Sub-Section (b) of Section 4 of this Ordinance shall not be punishable by imprisonment but shall be punishable by a civil fine of not more than \$25.00 on the first offence, not more than \$50 on the second offense, and not more than \$100 on the third offense and any subsequent offenses.
2. A person who fails to comply with Sub-Section (c) of Section 4 of this Ordinance shall not be punishable by imprisonment but shall be punishable by a civil fine of not more than \$25.00 on the first offense, not more than \$50 on the second offense, and not more than \$100 on the third offense and any subsequent offenses. For the purposes of Sub-Section (c) of Section 4 of this Ordinance, “person” shall be defined as an individual associated with the business who has the control or authority and ability to enforce the social distancing requirements of this 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 Order are met while the business is open to the public.
3. A notice of violation may be served by delivery into the hands of the suspected violator.
4. Violators may respond to a notice of ordinance violation either by signing the notice and returning the notice along with payment of the fine indicated thereon to the Municipal Court of Athens-Clarke County by the date indicated on the notice or by appearing in the Municipal Court to plead no liability to the charged violation at the date and time provided on the notice. As a violation of this Ordinance shall be deemed civil in nature, the government shall bear the burden to prove, by a preponderance of the evidence, that a defendant violated this ordinance. No proceedings for contempt or arrest shall be initiated for failure to appear on the return date on the notice.
5. Violators who fail to respond—by payment of the civil fine, entry of a “no liability” plea, or other mechanism as may be deemed appropriate by the Judge of the Municipal Court of Athens-Clarke County—to a notice of ordinance violation as provided for in paragraph 4 above may thereafter be served personally with an ordinance violation citation or accusation, and criminally prosecuted pursuant to section 1-1-5 (a) of the Code of Athens-Clarke County, Georgia.
6. The foregoing notwithstanding every effort shall be made to bring an individual into voluntary compliance with the terms of this Ordinance prior to issuance of any Notice of Violation.

(g) The provisions of Section 4 of this Ordinance shall not apply within the territorial limits of any municipality located within Athens-Clarke County or to any property, office, or facility of the Clarke County School District, the State of Georgia or its instrumentalities (including, without limitation, the Board of Regents of the University System of Georgia and any association or foundation affiliated therewith), or the United States of America or its instrumentalities.

SECTION 5.

This Ordinance shall become effective at 8:00 a.m. on the next day following the Mayor's approval, and will continue to be in effect until 11:59 p.m. on Tuesday, August 4, 2020, or until it is extended, rescinded, superseded, or amended by an ordinance of the Commission.

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

All Ordinances or parts of Ordinances in conflict with this Ordinance are, to the extent of such conflict, hereby repealed or set aside.

SECTION 6.

Copies of this Ordinance shall be: (1) promptly posted at Athens-Clarke County City Hall, 301 College Avenue, Athens, Georgia; (2) promptly posted on the www.accgov.com website; and (3) provided to any member of the public requesting a copy of this Order.

SO ORDERED AND ORDAINED this ___ day of July, 2020.

**THE UNIFIED GOVERNMENT OF ATHENS-
CLARKE COUNTY, GEORGIA**

Kelly Girtz, Mayor

Attest: _____
Gloria J. Spratlin, Clerk of Commission

[SEAL]