

**AN EXECUTIVE ORDER REQUIRING THE USE OF
FACE COVERINGS DURING THE COVID-19 OUTBREAK**

WHEREAS, there are 100,470 confirmed cases of COVID-19 in Georgia as of July 7, 2020, and 2,899 confirmed deaths of COVID-19 in Georgia as of July 7, 2020; and,

WHEREAS, the presence of community spread in Georgia and DeKalb County has been confirmed and it is expected that substantially more cases will be diagnosed in Georgia and DeKalb County during the COVID-19 outbreak; and,

WHEREAS, the World Health Organization declared COVID-19 a worldwide pandemic as of March 11, 2020; and,

WHEREAS, on March 13, 2020, President Donald Trump declared a national emergency in response to the outbreak of COVID-19; and,

WHEREAS, on March 14, 2020, Governor Brian Kemp declared that a public health emergency exists in the State of Georgia due to the spread of COVID-19 within Georgia; and,

WHEREAS, as a densely populated, thriving intown community that serves as a center of commercial, civic, government, social, entertainment, academic, and religious activities, the City of Brookhaven has heightened risk of “community spread” as that term is defined by the Centers for Disease Control and Prevention; and,

WHEREAS, a significant number of Brookhaven and Georgia residents are at risk of serious health complications, including death, from COVID-19; and,

WHEREAS, a large number of persons with serious infections can compromise the ability of the healthcare system in DeKalb County to deliver necessary care to the public; and,

WHEREAS, many hospitals including Atlanta Medical Center and Emory University Hospital ICU/CCU facilities are at maximum capacity for patients as of now; and

WHEREAS, COVID-19 is a respiratory illness, transmitted through person-to-person contact or by contact with surfaces contaminated with the virus and persons infected with COVID-19 may become symptomatic two to fourteen days after exposure; and,

WHEREAS, asymptomatic (including presymptomatic) infected persons are infectious and, without mitigation, the current estimate is that 40%-80% of infections occur from individuals without symptoms; and,

WHEREAS, respiratory droplets from infected persons are a major mode of COVID-19 transmission. This understanding is the basis of the recommendations for physical distancing, and

of the personal protective equipment guidance for healthcare workers. Droplets do not only come from coughing or sneezing; droplets are generated via talking and breathing; and,

WHEREAS, evidence indicates that the use of face coverings reduces the transmissibility per contact by reducing transmission of infected droplets in both laboratory and clinical contexts. Public face covering wearing is most effective at stopping the spread of the virus when compliance is high. This evidence supports the conclusion that the adoption of more widespread face covering requirements can help to control the COVID-19 epidemic by reducing the shedding of droplets into the environment from asymptomatic individuals; and,

WHEREAS, guidelines published by the U.S. Centers for Disease Control and Prevention (CDC) recommend that all people wear cloth face coverings in public settings where other physical distancing measures may be difficult to maintain. CDC also advises the use of simple cloth face coverings to slow the spread of the virus and help people who may have the virus and do not know it from transmitting it to others; and,

WHEREAS, decreased transmissibility due to face covering use could substantially reduce the death toll and **economic impact** while the cost of the intervention is low; and,

WHEREAS, as of July 7, 2020 orders requiring face coverings in total or in part are already in place state-wide in at least twenty-one (21) states and in many local communities in the United States; and,

WHEREAS, the cities of Savannah and East Point and Atlanta have issued Executive Orders or passed ordinances requiring masks while in public spaces; and

WHEREAS, O.C.G.A. § 38-3-28(a) authorizes local governments to enact rules and regulations as may be necessary for emergency management purposes; and

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

WHEREAS, Governor Kemp's executive order 6.29.20.02 "Empowering a Healthy Georgia" on June 29, 2020 ordered "that all residents and visitors to the State of Georgia are strongly encouraged to wear face coverings as practicable while outside their homes or place of residence, except when eating, drinking, or exercising outdoors;" 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(a);

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 28, 2020, and Brookhaven Code of Ordinances § 11-3 and Brookhaven Ordinance 2020-03-06 and it is specifically intended to supplement his declaration, as amended, and should not be construed to be inconsistent with that Order; and

WHEREAS, the Supreme Court of the United States has 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,” *Jacobson v. Massachusetts*, 197 U.S. 11 (1905); and

WHEREAS, requiring citizens to wear masks to protect themselves and others is analogous to mandatory seat belt laws, the requirement that children be vaccinated before entering public school, public health regulations that require shoes and shirts before entering a restaurant, and other public health and safety regulations; and

WHEREAS, Ordinance 2020-06-04 approved by City Council extended the public health state of emergency, previously declared and established by Ordinance 2020-03-05, until July 31, 2020.

NOW THEREFORE, pursuant to the authority vested in me by local and state law, after due consultation with the City Council, the City Attorney, and the City Manager, and making and concluding the factual recitations described above, IT IS HEREBY ORDERED

1. All persons entering a commercial establishment in the City must wear a face covering or mask while inside the establishment. This paragraph does not apply to religious establishments; however, the use of face coverings is highly recommended during religious services and activities as the evidence is overwhelming that religious services that do not require masks or social distancing substantially increase the risk of the spread of COVID-19.
2. All restaurants, retail stores, salons, grocery stores, and pharmacies in the City must require their employees to wear a face covering at all times while at work.
3. Proper use of a face covering shall cover both the nose and the mouth and shall remain in place, unless exempted, while the person is in a public space or at work.
4. Any person who is unable to wear a face covering safely due to age, an underlying health condition, or is unable to remove a face covering without the assistance of others should shelter at home and not go into public spaces. It shall be an affirmative defense to an alleged violation of this Order if the person can provide a certification by their primary care physician that wearing a mask will result in a specific risk to the individual patient’s health.
5. Face coverings are not required in the following circumstances:
 - a) In personal vehicles;
 - b) When a person is alone in enclosed spaces or only with other household members;
 - c) During outdoor physical activity, provided the active person maintains a minimum of 6 feet from other people with whom they do not cohabitate at all times;
 - d) While actively drinking, eating, or smoking;
 - e) When wearing a face covering would prevent the receipt of personal services, for example and without limitation, such as dental care or salon services; and

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f) When a person is 10 years of age or younger.

6. A person who fails to comply with Paragraph 1 of this Order shall be guilty of a civil infraction punishable by a fine of not more than \$500 pursuant to section 1-11 of Brookhaven Code of Ordinances.

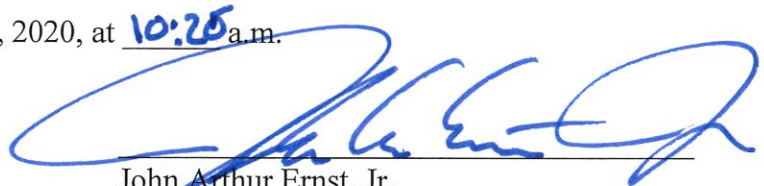
7. A person who fails to comply with section 2 of this Ordinance shall be guilty of a civil infraction, punishable by a fine of not more than \$500.

8. Each day of a continuing violation shall be considered a separate and distinct offense. In addition, to the fines established by paragraph 6, repeated violations of this Order by a person who owns, manages, operates, or otherwise controls a business subject to this Order may, subject to all procedural protections set forth in the City Code and state law, result in being declared to be a public nuisance, which may be abated by the City as provided by law. Notwithstanding the foregoing, every effort will be made to bring the business into voluntary compliance with the terms of this Order prior to the issuance of any citation. For purposes of paragraph 2, "person" shall be defined as any individual associated with the business who has control or authority and ability to enforce social distancing requirements of this Order within the business such as the 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 the requirements that of this Order are met while the business is open to the public.

9. Should any provision, paragraph, sentence or word of this Order 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, paragraphs, sentences, or words of this Order as issued shall remain in full force and effect.

10. This Order is effective as of 8:00 a.m. on Friday, July 10, 2020, and shall remain in effect until rescinded.

SO ORDERED, this 9th day of July, 2020, at 10:25 a.m.



John Arthur Ernst, Jr.
Mayor

ATTEST:



Susan Hiott
City Clerk

