

Bill No. _____

ORDINANCE NO. _____

AN ORDINANCE OF THE ST. JOSEPH COUNTY COUNCIL ESTABLISHING THE
REQUIREMENT TO WEAR A FACE MASK IN CERTAIN LOCATIONS IN ORDER TO
PREVENT OR LIMIT THE SPREAD OF THE COVID-19 DISEASE

COVID-19 FACE MASK REQUIREMENTS

STATEMENT OF PURPOSE AND INTENT

The purpose and intent of this Ordinance is to institute a requirement to wear a face mask in certain locations in order to prevent or limit the spread of the COVID-19 disease. The Governor of Indiana has declared a public health emergency for the Coronavirus Disease 2019 Outbreak (“COVID-19”) pursuant to Ind. Code § 10-14-3-12. The President of the United States has declared a national emergency for this outbreak as well. In St. Joseph County, Indiana, specifically, there are a number of confirmed cases of COVID-19 and the numbers continue to rise, indicating significant community spread of the virus in this County. The St. Joseph County Health Officer has issued St. Joseph County Public Health Order 3-2020, which requires (1) that any business establishment open to customers shall make alcohol-based hand sanitizer that contains at least 60% alcohol readily accessible at the entrance and in proximity to high-touch surfaces; and (2) subject to certain exceptions, a face covering over one’s nose and mouth shall be required for any persons entering an enclosed public space or enclosed place of business, unless such persons have a medical exception indicating that a face covering is ill-advised for health reasons, or the face covering prevents the persons from delivering or receiving goods or services. The face covering shall be worn at all times when physical distancing of at least six feet cannot be maintained.

Due to the escalating spread of the COVID-19 pandemic it is necessary for the immediate preservation of public health, safety and welfare of the residents of St. Joseph County, Indiana to take steps to mitigate the spread of the disease. The United States Centers for Disease Control and Prevention has recommended that members of the public, when they need to interact with others outside the home, and especially in indoor settings should cover the mouth and nose to prevent inadvertently spreading COVID-19. The St. Joseph County Health Officer based his Public Health Order 3-2020 (and its predecessors, 1-2020 and 2-2020), and recommended this Ordinance, on this recommendation, the most up-to-date data on the spread of COVID-19 in St. Joseph County, Indiana, and the existing research on the mechanisms by which COVID-19 is spread and the deaths and detrimental health effects that result from the disease.

The citizens and visitors of St. Joseph County, Indiana have been largely compliant with the Health Officer’s Order. However, concerns have arisen regarding workplace safety of employees whose employers are not requiring their employees to wear face coverings as mandated by the Health Officer’s Order. The St. Joseph County Health Officer and the St. Joseph County Board of Health have recommended that the St. Joseph County Council pass an ordinance that businesses as a matter of workplace safety require their employees to comply with

those requirements as laid out in the Health Officer's Order. The St. Joseph County Health Officer and St. Joseph County Board of Health have recommended that the ordinance enforce these requirements through the use of civil penalties, in line with other public safety ordinances already in place in St. Joseph County, Indiana.

NOW, THEREFORE, IT IS ORDAINED BY THE ST. JOSEPH COUNTY COUNCIL, THAT:

SECTION 1. This ordinance shall be in effect until the County Council public hearing in April, 2021, at which time the Council will make a determination to renew it, change it, or rescind it. The Council has the option to rescind the Ordinance any time after passage of the Ordinance if the Council determines the conditions within the County no longer merit the Ordinance.

SECTION 2. Definitions.

(a) As used in this ordinance, a "Face Mask" means a covering made of cloth, fabric, or other soft or permeable material, without holes that covers only the nose and mouth and surrounding areas of the lower face. A covering that hides or obscures the wearer's eyes or forehead is not a Face Mask. A Face Mask may be factory-made or may be handmade and improvised from ordinary household materials. Any mask that incorporates a one-way valve (typically a raised plastic cylinder about the size of a quarter on the front or side of the mask) that is designed to facilitate easy exhaling allows droplets to be released from the mask and therefore puts others nearby at risk. As a result, these masks are not a Face Mask under this Ordinance and must not be used to comply with this Ordinance's requirements.

(b) As used in this Ordinance, a "Business Enterprise" includes but is not limited to any and all proprietorships, joint ventures, partnership and corporations. It includes but is not limited to healthcare operations, grocery stores, retail businesses, restaurants, and any other business in which a company may be engaged. It applies to both for-profit and not-for-profit enterprises.

(c) As used in this Ordinance, a "Person" is any individual.

(d) As used in this Ordinance, the "Board of Health" refers to the St. Joseph County Board of Health.

(e) As used in this Ordinance, the "Health Department" refers to the St. Joseph County Department of Health and its staff.

(f) As used in this Ordinance, the "Health Officer" refers to the St. Joseph County Health Officer or his or her duly authorized representative.

SECTION 3. Requirement to Wear Face Mask. Except as otherwise provided in this Ordinance, a Face Mask is required for any Persons entering an enclosed public space or enclosed place of business. The Face Mask shall be worn at all times when physical distancing of at least six (6) feet cannot be maintained.

SECTION 4. Exceptions to Section 3. The requirement in Section 3 to wear a Face Mask shall not apply when:

(a) A Person has a medical exception as documented by a physician's statement indicating that a Face Mask is ill-advised for health reasons. Such medical exceptions may include, but are not limited to: any Person who has trouble breathing; is unconscious, incapacitated, or otherwise unable to remove the Face Mask without assistance; respiratory conditions such as asthma and chronic obstructive lung disease (i.e., COPD); severe anxiety; autism; cerebral palsy. The physician's statement is not required to document the specific medical reason for which the Face Mask is ill-advised, but must be an affirmation by a licensed physician that the Person has such a medical exception.

(b) A Person is five (5) years of age or younger.

(c) The Face Mask prevents the Person from delivering or receiving goods or services (i.e., while eating or drinking). This exception only applies during the actual delivery or receipt of goods or services, and does not apply when a Person is not actively engaged in such delivery or receipt.

SECTION 5. COVID-19 Work-Place Safety. Business Enterprises must:

(a) Require their employees, contractors, owners and volunteers to wear a Face Mask at the workplace and when performing work off-site anywhere the employee, contractor, owner, or volunteer would be otherwise required by this Ordinance to wear such Face Mask pursuant to Section 3.

(b) Take reasonable measures, such as posting signs, to remind their customers and the public of the requirement that they wear a Face Mask while inside the place of business.

(c) This ordinance does not supersede Indiana or Federal OSHA workplace guidelines.

SECTION 6. Enforcement.

(a) The Health Department and Health Officer are hereby designated to enforce the terms and provisions of this Ordinance in accordance with Indiana law.

(b) Whenever the Health Department or Health Officer receives a complaint or has reason to suspect that an alleged violation of this Ordinance is occurring, the Health Department or Health Officer may investigate the complaint or suspicion and may take whatever action is warranted in accordance with the provisions of this Ordinance.

(c) Whenever it is necessary to make an inspection to enforce any of the provisions of this Ordinance, or when there is reasonable cause to believe that there exists in any building or upon any premises any violation of the provisions of this Ordinance, the Health Department or Health Officer are authorized at all reasonable times to inspect the same for compliance with this Ordinance. In the event that entry is denied by the owner, tenant or occupant of a premises, the Health Department or Health Officer may make application to any court of competent jurisdiction for the issuance of a search warrant. Such application shall identify the

premises upon which entry is sought and the purpose for which entry is desired. The application shall state the facts giving rise to the belief that a condition which is in violation of this Ordinance exists on the premises, or that such a violation in fact exists and must be abated. Any warrant issued pursuant to such application shall order such owner, tenant or occupant to permit entry to the Health Department or Health Officer, as applicable, for the purposes stated therein.

(d) Any Business Enterprise not complying with the requirements of this Ordinance may be issued a citation by the Health Department or Health Officer.

(e) Subject to the provisions of subsections (f)(i)-(ii) below, each day a violation of this Ordinance remains uncorrected is a distinct and separate violation subject to an additional citation and fine in the amount prescribed by this Ordinance.

(f) Procedures for initial notice of violation:

(i) The Health Department or Health Officer may issue a notice of violation of this Ordinance to a Business Enterprise who commits a violation of this Ordinance. The notice of violation may be served by: personal service; certified mail, return receipt requested; or by registered mail.

(ii) No citation shall be issued unless notice as required by subsection (f)(i) has been provided at least forty-eight (48) hours before the citation is issued, in order to allow the Business Enterprise receiving notice an opportunity to correct the violation as determined by representatives of the Health Department conducting a re-inspection or follow-up interview.

(g) Action after initial notice of violation:

(i) After a Business Enterprise is served with an initial notice of violation pursuant to subsection (f), and after the re-inspection or re-interview, a Business Enterprise may be served with a citation assessing the fine imposed by: personal service; certified mail, return receipt requested; or by registered mail. The fine shall be paid within ten (10) days of the receipt of the citation to the Health Department.

(h) If a Business Enterprise that receives a citation fails to either pay the fine when due, the St. Joseph County Attorney, Health Department, or Health Officer may institute legal action in a court of competent jurisdiction to enforce the terms and conditions of this Ordinance, including, but not limited to assessment and collection of fines as provided below or the pursuit of injunctive and other equitable relief and remedies available under Indiana law.

- (i) Fines
 - (i) Monetary fines for violation of this Ordinance shall be assessed and shall be as follows: Each violation of this Ordinance—Not less than \$50.00 nor more than \$250.00.
 - (ii) Each day that a violation of this Ordinance remains uncorrected shall constitute a violation which may result in the issuance of a subsequent citation.
- (ii) Additional remedies.
 - (i) Seeking a penalty as authorized in this Ordinance does not preclude the Health Department or Health Officer from seeking alternative and additional relief from the court in the same action, or from seeking injunctive relief or any other remedy in a separate action for the enforcement of this Ordinance available under applicable Indiana law.

SECTION 7. The provisions of this Ordinance are severable and if any sentence, section or other part of this Ordinance shall be found invalid, such invalidity shall not affect the remaining provisions and the remaining provisions shall continue to be in full force and effect.

SECTION 8. This Ordinance shall be in full force and effect from and after its enactment, approval by the Board of Commissioners, and publications, as required by law.

Passed and adopted this ___ day of _____, 2020.

Member, St. Joseph County Council