

ORDINANCE # _____ of 2020

**AN ORDINANCE TO REQUIRE THE USE OF FACE MASKS
OR FACE COVERINGS WITHIN THE CITY TO PREVENT
THE SPREAD OF INFECTIOUS DISEASE**

BE IT ORDAINED by the Common Council of the City of Oneonta as follows:

Section 1. Chapter 122 of the Code of the City of Oneonta entitled "Masks and Face Coverings" is hereby created as follows:

Chapter 122. Masks and Face-Coverings.

§ 122-1 Findings and purpose.

- A. In February 2020, the Center for Diseases Control and Prevention ("CDC") confirmed the first case in the United States of a new respiratory disease called the novel coronavirus (COVID-19). COVID-19 is caused by a virus (SARS-CoV-2) that is part of a large family of viruses called corona viruses. COVID-19 spread rapidly in New York. COVID-19 poses serious health risks to persons infected with the disease, particularly those with underlying medical conditions and the elderly. The spread of COVID-19 has caused economic hardship for many of the City's residents and business owners and has significantly impacted the City's ability to provide services to its constituents. New York State first identified cases within its borders on March 1, 2020. It is therefore essential that the spread of the virus be slowed to safeguard public health, safety, and welfare.
- B. The virus that causes COVID-19 is readily transmitted via respiratory droplet contact, especially in group settings. Droplet transmission can be reduced with the use of personal protective barriers such as face masks. The CDC and other public health agencies have uniformly recommended that the general public wear cloth face coverings and that individuals not residing within the same household maintain at least six feet of social distance from one another to prevent the spread of COVID-19 by droplet transmission.
- C. On April 15, 2020, Governor Cuomo issued Executive Order 202.17 requiring any individual who is over the age of two and able to medically tolerate a face-covering to cover the nose and mouth with a mask or cloth face-covering when in a public place and unable to maintain, or when not maintaining social distance.
- D. On May 28, 2020, the Governor issued Executive Order 202.34 which authorized business operators and building owners to deny admittance to individuals who fail to comply with the Governor's face mask mandate set forth in Executive Order 202.17 or to require or remove individuals from the premises if such individual fails to wear a face mask as required. Nothing in Executive Order 202.34 or any other Executive Order prohibits or limits the right of State and local enforcement authorities from imposing fines or other penalties for violations of the directive in Executive Order 202.17.
- E. The New York State Department of Health has issued Industry Guidance During the COVID-19 public health emergency for a variety of activities, industries and businesses which sets forth physical distancing requirements to minimize the spread of droplets and airborne contaminants, including generally mandating a distance of six feet between individuals, and when not able to do so, the wearing of acceptable face covering.
- F. The Governor has issued multiple Executive Orders limiting the gatherings of individuals, whether it is on public or private property. On June 15, 2020, the Governor issued Executive Order 202.45, which modified prior Executive Orders to "allow gatherings of fifty (50) or fewer individuals for any lawful purpose or reason, so long as any such gatherings occurring indoors do not exceed 50% of the maximum occupancy for any particular indoor area, and provided that the location of the gathering is in a region that has reached Phase 4 of the State's reopening, and provided further that social

distancing, face covering, and cleaning and disinfection protocols required by the Department of Health are adhered to." Thus, gatherings that do not exceed the Governor's limitations may occur so long as appropriate social distancing and face covering requirements are adhered to.

- G. Governor Cuomo has stated that local governments have a responsibility to enforce social distancing, mask-wearing requirements and business closures and limitations. The Governor has warned local governments across New York State that if local officials do not enforce compliance with COVID-19 public health orders, areas will be closed again. The Governor has stated that he will reverse openings in areas that are not complying with the rules and in those areas where local governments are not enforcing the law.
- H. While voluntary compliance with the aforementioned health and safety precautions on public and private property is preferred, the City has determined that the grave health risks and economic impacts associated with COVID-19 require enforcement mechanisms to protect the public health, safety and welfare of City residents. This ordinance therefore establishes mandatory requirements regarding the use of face masks and face coverings on private and public property in the City of Oneonta as well as penalties for any violation of the requirements of this Chapter.
- I. The City of Oneonta is a small City having a population of some 14,000 residents, of which approximately 7,000 are students attending either the State University of New York at Oneonta, or Hartwick College, who come to the City from different areas of the State, the country and the world. At the time of the enactment of this Ordinance, there were approximately 700 positive cases of COVID-19 diagnosed among students attending the State University at Oneonta, and many of those students continue to reside in the community despite the closure of the campus.
- J. The purpose of this law is to assist in reducing the spread of COVID-19 within the City and is being enacted pursuant to the authority contained in Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York, Part 66 "Immunizations and Communicable Diseases", Subpart 66-3, entitled "COVID-19 Emergency Regulations effective July 9, 2020.

§ 122-2 Definitions.

FACE MASKS AND FACE COVERINGS:

Masks and face coverings include, but are not limited to, cloth (e.g., homemade, sewn, quick cut, bandana), surgical masks, N-95 respirators, and face shields, any one of which must cover the nose and mouth of the wearer.

§ 122-3 Face mask or face covering required.

In the City of Oneonta all persons in or upon public property must wear a face mask or face covering, which must be worn covering the nose and mouth of the wearer, at all times when the wearer is unable to maintain a distance of six feet of another person or persons unless such person is part of a household unit.

§ 122-4 Face mask or face covering required on private property.

All persons must wear a face mask or face covering which must be worn covering the nose and mouth of the wearer at all times when on private property located in the City of Oneonta, including but not limited to public areas of residential property, business and professional offices, retail and personal service establishments, restaurants, child care facilities, places of public accommodation, private clubs and religious establishments, when unable to maintain a distance of six feet from another person who is not a member of the same household.

Business owners may be found in violation of this law and may be fined for not adhering to the provisions of this law within or with on their business premises.

§ 122-5. Exceptions.

- A. Face masks or face coverings shall not be required to be worn if individuals maintain a distance of

at least six feet from another person. Individuals who reside in the same household are not required to wear a face mask or face covering when located within six feet of each other.

- B. Face masks or face coverings shall not be required to be worn by any child under the age of two or by anyone who is unable to medically tolerate a face covering as determined by a New York licensed physician or mid-level provider, however, this provision shall not exempt any person from maintaining a distance of at least six feet from another person, except for a child under two, or when such person is with a guardian who is not a member of the household.
- C. Drivers traveling alone or exclusively with members of their households in or upon a motor vehicle do not need to wear face coverings when traveling in or upon said vehicles. Individuals who are riding bicycles, scooters, or are jogging are exempt if in the roadway and not upon the sidewalk.
- D. Persons playing a sport or participating in a fitness class or recreational activity are not required to wear a face mask if individuals are unable to tolerate a face covering for the physical activity. Persons must put a face mask or face covering on as soon as such physical activity has ended.
- E. Individuals are not required to wear a face mask or face covering when they are stationary, seated or standing while actively eating and/or drinking, or while seated within a City restaurant's approved outdoor eating area.
- F. Police officers, fire fighters, ambulance personnel and other first responders shall not be required to wear a face mask or face covering when not practical because they are engaged in a public safety matter of an emergency nature.

§ 122-6. Enforcement; penalties for offenses.

- A. This law may only be enforced during the time that a Declaration of Emergency is issued by the New York State Governor due to an epidemic or disease outbreak that is communicable through droplet contact or airborne transmission.
- B. The police department of the City of Oneonta shall enforce the provisions of this chapter.
- C. Any person found guilty of a violation of this chapter shall be subject to a civil penalty in the form of a fine of up to \$1,000 for an individual. Any business whose owner or employees are found guilty of a violation of this chapter while on the job shall be subject to a civil penalty in the form of a fine of up to \$2,000.

Section 2. Severability.

The provisions of this Local Law are separable and if any provision, clause, sentence, subsection, word or part thereof is held illegal, invalid or unconstitutional, or inapplicable to any person or circumstance, such illegality, invalidity or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, subsections, words or parts of this ordinance or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this ordinance would have been adopted if such illegal, invalid or unconstitutional provision, clause, sentence, subsection, word or part had not been included therein, and if such person or circumstance to which this ordinance or part hereof is held inapplicable had been specifically exempt therefrom.

Section 3. Effective date.

This ordinance shall take effect immediately.