

ORDINANCE NO.

**AN URGENCY ORDINANCE OF THE CITY OF SAN JOSE
ADDING CHAPTER 9.61 TO TITLE 9 OF THE SAN JOSE
MUNICIPAL CODE REQUIRING THE WEARING OF FACE
COVERINGS FOR THE DURATION OF THE CURRENT
COVID-19 HEALTH EMERGENCY, AND SETTING FORTH
THE FACTS CONSTITUTING SUCH URGENCY**

WHEREAS, on January 31, 2020, the United States Secretary of Health and Human Services declared a public health emergency based on the threat caused by COVID-19 (also known as the “Coronavirus Disease”), and the President of the United States issued a Proclamation Declaring a National Emergency Concerning COVID-19 beginning March 1, 2020; and

WHEREAS, on March 4, 2020, the Governor of California proclaimed a State of Emergency (Executive Order N-25-20) to exist in California based on the threats to public health caused by COVID-19; and

WHEREAS, on March 10, 2020, the City Council of San José ratified the Director of Emergency Services’ Proclamation of Local Emergency finding that the existence and threat of COVID-19 in the community gives rise to conditions of extreme peril to the safety and health of persons within the City; and

WHEREAS, on March 16, 2020, the Santa Clara County Public Health Officer issued a COVID-19 related order doing the following:

- Requiring residents to shelter in place and businesses to close, and
- Establishing exceptions, including allowing individuals to leave their homes to engage in “essential activities,” “essential government functions” and “essential businesses,” as those terms are defined in the order; and

WHEREAS, on March 19, 2020, the Governor of the State of California issued an Order (Executive Order N-33-20) that all individuals living in California stay home or at their place of residence, except as needed to maintain continuity of operations for certain critical infrastructure sectors, to protect the public health of Californians, to mitigate the impact of COVID-19, and to ensure the healthcare delivery system is capable of serving all; and

WHEREAS, on April 17, 2020, Santa Clara County issued guidance strongly recommending that members of the public wear face coverings in certain situations, and on that same day Alameda, Contra Costa, Marin, San Francisco, and San Mateo counties issued Public Health Orders requiring that the public wear face coverings in similar situations. Since that date, the cities of Cupertino, Fremont, Palo Alto, and Milpitas have issued similar orders requiring the wearing of face coverings; and

WHEREAS, the Santa Clara County Health Officer has issued new orders subsequent to the original order on March 16, 2020, including the most recent order on May 18 , 2020, to extend the earlier orders and to allow some activities to resume; and

WHEREAS, as of May 26, 2020, Santa Clara County had a total of 2675 confirmed cases of COVID-19, and, of those cases, 1747 were in San José. County transmission is believed to be widespread and due to limited testing capacity, San José and Santa Clara County counts in all likelihood only represent a small portion of actual cases; and

WHEREAS, according to information made available through the Santa Clara County Public Health Department and the Center for Disease Control, COVID-19 is spread through respiratory droplets that are produced when an infected person coughs, sneezes or talks. These droplets can land in the mouths or noses of others who are nearby or can be inhaled into their lungs. COVID-19 has been shown to attach to surfaces for days and remain viable in the air for up to three hours after the infected

person has left. When properly worn by the user, face coverings have the potential to slow the spread of the virus by limiting the spread of these droplets. Even a small reduction in community transmission could make a major difference in the demand on the healthcare system; and

WHEREAS, people can be infected and contagious while not showing any symptoms, meaning they are asymptomatic. People can also be infected and contagious 48 hours before developing symptoms, during the time when they are pre-symptomatic. In addition, many people with the COVID-19 virus have mild symptoms and do not recognize they are infected and contagious. Due to these factors, people can unknowingly be infected and can unintentionally infect others. Therefore, the Center for Disease Control believes that wearing a face covering, when combined with physical distancing of at least 6 feet and frequent hand washing, may reduce the risk of transmitting coronavirus when in public and engaged in essential activities; and

WHEREAS, given the extraordinary health threat caused by COVID-19 and the need to take extraordinary measures to limit its spread, the City Council is compelled to enact this urgency ordinance, which sets forth the requirements for wearing of face coverings in public in the City of San José; and

WHEREAS, pursuant to section 605 of the City Charter, this urgency ordinance must be "adopted as and declared by the Council to be an urgency measure necessary for the immediate preservation of the public peace, health or safety, containing a statement of the facts constituting such urgency"; and

WHEREAS, pursuant to the provisions and requirements of the California Environmental Quality Act of 1970, together with related State CEQA Guidelines and Title 21 of the San José Municipal Code (collectively, "CEQA"), the Director of Planning, Building and Code Enforcement has determined that the provisions of this Ordinance do

not constitute a project, under File No. PP17-008 (General Procedure and Policy Making resulting in no changes to the physical environment); and

WHEREAS, the City Council of the City of San José is the decision-making body for this Ordinance; and

WHEREAS, this Council has reviewed and considered the "not a project" determination under CEQA prior to taking any approval actions on this Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. A new Chapter is added to Title 9 of the San José Municipal Code, to be numbered, entitled, and to read as follows:

Chapter 9.61

FACE COVERINGS REQUIRED DURING COVID-19 HEALTH EMERGENCY

9.61.010 Words and Phrases

Words and phrases used in this Chapter unless otherwise defined shall have the same meanings as the words and phrases used in the Santa Clara County Health Officer Order dated May 18 , 2020 as such Order may be amended from time to time.

9.61.020 Face Covering

A. "Face Covering" 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 Covering. Examples of Face Coverings include a scarf or bandana; a neck gaiter; a homemade covering made from a t-shirt, sweatshirt, or towel, held on with rubber bands or otherwise; or a mask, which need not be medical-grade. A Face Covering may be factory-made or may be handmade and improvised from ordinary household materials. The Face Covering should be comfortable, so that the wearer can breathe comfortably through the nose and does not have to adjust it frequently, so as to avoid touching the face. For as long as medical grade masks such as N95 masks and surgical masks are in short supply, members of the public should not purchase those masks as Face Coverings under this Chapter; those medical grade masks should be reserved for health care providers and first responders.

- B. 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 is not a Face Covering under this Chapter and is not to be used to comply with this Chapter's requirements. Valves of that type permit droplet release from the mask, putting others nearby at risk.

9.61.030 Purpose

- A. The intent of this Chapter is to ensure that all people who are visiting or working at Essential Businesses, Outdoor Businesses and Additional Businesses, all other businesses that may be designated in any Santa Clara County Health Officer Order amending the Order dated May 18, 2020, and all people who are seeking care at healthcare facilities or taking or waiting in line for public transit or transportation with others wear a Face Covering to reduce the likelihood that they may transmit or receive the COVID-19 virus. The intent of this Chapter is also to ensure that people who work for or seek services from entities engaged in Essential Infrastructure work, Minimum Basic Operations, and those seeking or

receiving Essential Government Functions also wear a Face Covering when they are in close proximity to others. In so doing, this Chapter will help reduce the spread of the COVID-19 virus and mitigate the impact of the virus on members of the public and on the delivery of critical healthcare services to those in need. All provisions of this Chapter must be interpreted to effectuate this intent.

- B. Face coverings are meant to protect the public from the wearer in case the wearer is infected and not yet displaying symptoms. Face coverings are not a substitute for other evidence-based measures to prevent the spread of COVID-19. Face coverings should be used in addition to, but not in place of, other evidence-based measures such as social distancing, frequent hand washing practices, avoiding touching the eyes, nose, and mouth; and avoiding interactions if sick.

9.61.040 Applicability of Face Covering Requirement

- A. All members of the public, except as specifically exempted below, must wear a Face Covering outside their home or other place they reside in the following situations:
 - 1. When they are inside of, or in line to enter, any Essential Business, Outdoor Business, and Additional Business including, but not limited to, grocery stores, convenience stores, supermarkets, laundromats, and restaurants;
 - 2. When they are inside or at any location or facility engaging in Minimum Basic Operations or seeking or receiving Essential Government Functions;
 - 3. When they are engaged in Essential Infrastructure work;

4. When they are obtaining services at Healthcare Operations— including hospitals, clinics, COVID-19 testing locations, dentists, pharmacies, blood banks and blood drives, other healthcare facilities, mental health providers, or facilities providing veterinary care and similar healthcare services for animals—unless directed otherwise by an employee or worker at the Healthcare Operation; or
 5. When they are waiting for or riding on public transportation (including without limitation any bus) or paratransit or are in a taxi, private car service, or ride-sharing vehicle.
- B. Except for public transportation or paratransit provided by a government entity which are subject to their own regulations regarding face coverings, each driver or operator of any public transportation or paratransit vehicle, taxi, or private car service or ride-sharing vehicle shall wear a Face Covering while driving or operating such vehicle, regardless of whether a member of the public is in the vehicle, due to the need to reduce the spread of respiratory droplets in the vehicle at all times.

9.61.050 Application of Face Covering Requirement to Essential Businesses, Outside Businesses and Additional Businesses

All Essential Businesses, Outside Businesses and Additional Businesses, as well as entities and organizations with workers engaged in Essential Infrastructure work or Minimum Basic Operations, except government entities providing Essential Government Functions and Healthcare Operations, which are subject to their own regulation regarding specified face coverings, shall:

- A. Require their employees, contractors, owners, and volunteers to wear a Face Covering at the workplace and when performing work off-site any time the employee, contractor, owner, or volunteer is:
1. Interacting in person with any member of the public or with coworkers;
 2. Working in any space visited by members of the public, such as by way of example and without limitation, reception areas, grocery store or pharmacy aisles, service counters, public restrooms, cashier and checkout areas, waiting rooms, service areas, and other spaces used to interact with the public, regardless of whether anyone from the public is present at the time;
 3. Working in any space where food is prepared or packaged for sale or distribution to others;
 4. Working in or walking through common areas such as hallways, stairways, elevators, and parking facilities; or
 5. In any room or enclosed area when other people (except for members of the person's own household or residence) are present, including coworkers.
 6. For clarity, a Face Covering is not required when a person is in a personal office (a single room) when others outside of that person's household are not present as long as the public and coworkers do not regularly visit the room. By way of example and without limitation, a construction worker, plumber, bank manager, accountant, or bike repair person is not required to wear a Face Covering if that individual is alone and in a space not

regularly visited by the public or coworkers, but that individual must put on a Face Covering when coworkers are nearby, when being visited by a client/customer, and anywhere members of the public or other coworkers are regularly present.

- B. Take reasonable measures, such as posting signs, to remind their customers and the public of the requirement that they wear a Face Covering while inside of or waiting in line to enter the business, facility, or location. Essential Businesses, Outside Businesses and Additional Businesses and entities or organizations that engaged in Essential Infrastructure work or Minimum Basic Operations may take reasonable steps to prohibit any member of the public who is not wearing a Face Covering from entering, may refuse to serve that person if those efforts are unsuccessful, and may seek to remove that person.

9.61.060 General Conditions and Exemptions

- A. For Face Coverings that are not disposed of after each use, people should clean them frequently and have extra ones available so that they have a clean one available for use.
- B. Any child aged two years or less must not wear a Face Covering because of the risk of suffocation. Also due to risk of suffocation, this Chapter does not require that any child aged six years or less wear a Face Covering. Parents and caregivers must supervise use of Face Coverings by children to avoid misuse.
- C. Wearing a Face Covering is recommended but not required while engaged in outdoor recreation such as walking, hiking, bicycling, or running. But each person engaged in such activity must comply with social distancing requirements including maintaining at least six feet of separation from all other people to the

greatest extent possible. Additionally, it is recommended that each person engaged in such activity bring a Face Covering and wear that Face Covering in circumstances where it is difficult to maintain compliance with Social Distancing Requirements and that they carry the Face Covering in a readily accessible location, such as around the person's neck or in a pocket, for such use. Because running or bicycling causes people to more forcefully expel airborne particles, making the usual minimum six (6) feet distance less adequate, runners and cyclists must take steps to avoid exposing others to those particles, which include the following measures: wearing a Face Covering when possible; crossing the street when running to avoid sidewalks with pedestrians; slowing down and moving to the side when unable to leave the sidewalk and nearing other people; never spitting; and avoiding running or cycling directly in front of or behind another runner or cyclist who is not in the same household.

- D. This Chapter does not require any person to wear a Face Covering while driving alone, or exclusively with other members of the same family or household, in a motor vehicle.
- E. A Face Covering is also not required by this Chapter to be worn by a particular individual if the person can show either: (1) a medical professional has advised that wearing a Face Covering may pose a risk to the person wearing the mask for health-related reasons; or (2) wearing a Face Covering would create a risk to the person related to their work as determined by local, state, or federal regulators or workplace safety guidelines.
- F. A Face Covering is not required by this Chapter to be worn by a person who has trouble breathing or is unconscious, incapacitated, or otherwise unable to remove the Face Covering without assistance.

9.61.070 Expiration

The provisions of this Chapter shall expire on the date on which the City's Proclamation of Local Emergency related to COVID-19 is terminated.

SECTION 2. The City Council of the City of San José hereby finds that there is a current and immediate threat to the public health, safety and/or welfare and a need for immediate preservation of the public peace, health, or safety that warrants this urgency measure, which finding is based upon the facts stated above and in the memorandum to the Rules and Open Government Committee from Vice Mayor Jones and Councilmember Jimenez dated May 8, 2020, as well as any oral or written testimony at the May 19, 2020 City Council meeting.

SECTION 3. This Ordinance is declared by the City Council to be an urgency measure necessary for the immediate preservation of the public peace, health or safety. The facts constituting such urgency are all of those certain facts set forth in Section 2 of this Ordinance.

SECTION 4. This Ordinance shall become effective immediately upon its adoption pursuant to Section 605 of the Charter of the City of San José and shall remain in effect until the effective date of a duly adopted superseding ordinance, or upon the termination of the Proclamation of Local Emergency, whichever occurs first.

ADOPTED IN ACCORDANCE WITH CHARTER SECTION 605(d) this _____ day of _____, 2020, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk