

Ordinance No. 556-2020

By Mayor Jackson and Council Members
Griffin, Zone and Kelley

FOR PASSAGE
July 15, 2020

AN EMERGENCY ORDINANCE

To supplement the Codified Ordinances of Cleveland, Ohio, 1976, by enacting new Sections 602.01 to 602.06 relating to facial coverings and social distancing, Section 437.30, relating to passenger facial coverings in vehicles for hire during the COVID-19 Pandemic, Sections 236.01 to 236.07 relating to the Dine Safe Ohio Order, and Sections 238.01 to 238.05 relating to sanitization after COVID-19 positive employee.

WHEREAS, COVID-19 is a respiratory disease that can result in serious illness or death, is caused by the SARS-CoV-2 virus, which is new strain of coronavirus that had not been previously identified in humans and can easily spread from person to person. The virus is spread between individuals who are in close contact with each other (within six feet); and

WHEREAS, the World Health Organization, the United States of America, the State of Ohio, Cuyahoga County, and the City of Cleveland each have declared COVID-19 a public health emergency; and

WHEREAS, as of July 8, 2020, the Centers for Disease Control and Prevention (CDC) reported 2,982,900 cases of COVID-19 in the United States, resulting in 131,065 deaths; and

WHEREAS, on March 11, 2020, Mayor Jackson, under and by the virtue of the authority vested in him by the Ohio Constitution, the Charter and laws of the City of Cleveland, declared a Proclamation of Civil Emergency in the City of Cleveland due to the threat to the health and safety of all citizens caused by the outbreak of COVID-19; and

WHEREAS, on March 22, 2020, the Ohio Department of Health issued a Director's Stay at Home Order, containing prohibitions on mass gatherings over 10 people, requirements for social distancing, and allowances for only essential business to be open to the public, which order was subsequently amended to allow businesses to open with the certain requirements and recommendations and was subsequently extended and which order is currently in effect; and

WHEREAS, on June 5, 2020, the Ohio Department of Health issued the Director's Dine Safe Ohio Order outlining minimum requirements for restaurants, bars, banquet and catering facilities and services, which minimum requirements addressed, among other items, maximum dining capacity and social distancing requirements; and

WHEREAS, the Ohio Department of Health orders specify that they set forth minimum acts; and

WHEREAS, under the Revised Code, the Cleveland Department of Public Health and the Cleveland Police have authority to enforce Ohio Department of Health orders; and

WHEREAS, the Center for Disease Control recommends face coverings in public when other physical distancing measures are difficult to maintain to help slow the spread of COVID-19 from asymptomatic or unknowing carriers to others; and

WHEREAS, the American Hospital Association, the American Medical Association, and the American Nurses Association wrote an open letter to the American public on July 6, 2020 urging the American public to wear a facial mask, to maintain physical distancing, and to wash their hands; and

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WHEREAS, the Texas Medical Association published a guidance chart prepared by physician experts that outlined behavior based on risk and the lowest risk activity on the chart is opening the mail and the highest risk activity on the chart is going to a bar; and

WHEREAS, since June 1, 2020 in the City of Cleveland, seven out of the 13 outbreak locations were in bars and entertainment venues; and

WHEREAS, on July 2, 2020, a Public Health Advisory Alert System, a four-level color coded system was established that provides data on the severity of COVID-19 in Ohio counties; and Cuyahoga County, where the City of Cleveland is located, was categorized, and continues to be categorized, as Level 3 Public Emergency, characterized by very high exposure and spread of COVID-19 with a recommendation to limit activities as much as possible and to follow all current health orders; and

WHEREAS, in fourteen days prior to July 2, 2020, the City's Department of Public Health (CDPH) reported 525 new confirmed COVID-19 cases and the Cuyahoga County's Board of Health reported 1,300 new confirmed COVID-19 cases, which is more confirmed cases than Cuyahoga County has previously seen in any 14-day period; and

WHEREAS, as of July 1, 2020, CDPH has reported a significant rise in confirmed COVID-19 cases in the City of Cleveland; and

WHEREAS, on July 8, 2020, the Ohio Department of Health issued a Director's Order mandating that all individuals, unless otherwise exempted, to wear masks in certain locations; and

WHEREAS, after weighing the known information about the COVID-19 virus, consulting with the City's Department of Public Health, and considering the guidance from the Ohio Department of Health, this Cleveland City Council concludes that the safety of residents of and persons in the City of Cleveland is best protected by implementing face coverings and social distancing requirements; and

WHEREAS, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department and constitutes an emergency measure providing for the immediate preservation of the public peace, property, health and safety to mitigate the spread of COVID-19, while allowing for the continuation of essential services, businesses, and traveling; now, therefore,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CLEVELAND:

Section 1. That the Codified Ordinances of Cleveland, Ohio, 1976 are supplemented by enacting new Sections 602.01 to 602.06, Section 437.30, Sections 236.01 to 236.07 and Sections 238.01 to 238.05 to read as follows:

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Chapter 602 Facial Coverings and Social Distancing During the COVID-19 Pandemic

Section 602.01 Definitions

As used in this Chapter:

(a) “Facial covering” means any material covering an individual’s nose, mouth and chin.

(b) “Household” means those persons who reside in the same home and includes family members, foster children and legal wards even if they do not live in the household and does not include persons sharing the same general house, when the living style is primarily that of a dormitory or commune.

(c) “Covered businesses” include any for-profit, non-profit, educational entities, or government entities (other than federal) regardless of the nature of service, the function it performs, or its corporate or entity structure and does not include schools, as defined in division (e) of this section, or jails or prison facilities.

(d) “Family” means one (1) or more persons related by blood, adoption or marriage, or a family foster home, living and cooking together as a single housekeeping unit, exclusive of house-hold servants. A number of persons, but not exceeding three (3) living and cooking together as a single housekeeping unit though not related by blood, adoption or marriage shall be deemed to constitute a family. A family foster home shall mean a family related by blood, adoption or marriage as defined above with no more than five (5) foster children.

(e) “Schools” mean any public, private, or charter school or institution that offer kindergarten through grade twelve instruction that should follow the guidelines set forth by the Ohio Department of Education and the Ohio Department of Health.

Section 602.02 Facial Coverings

(a) Unless otherwise exempted under division (c) of this section, no person in the City of Cleveland shall fail to wear a facial covering at all times when doing any of the following:

(1) Being in any indoor location that is not a residence;

(2) Being outdoors and unable to consistently maintain a distance of six feet or more from individuals who are not members of their household; or

(3) Waiting for, riding, driving, or operating a taxicab or public hack, as defined in Section 443.011, a private car service, a ride sharing, vehicle, or any other motor vehicle for hire, as defined in Section 401.30; or

(b) Division (a)(3) of this section does not apply to either private or rental vehicles where members of a family are sharing a vehicle or vehicles engaged in direct travel through the City of Cleveland that do not stop in the city.

(c) The facial covering requirements set forth in division (a) above shall not apply to any of the following:

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- (1) The individual is under ten years of age;
- (2) The individual states he or she has a medical condition, including those with respiratory conditions that restrict breathing, mental health conditions, or a disability that contraindicates the wearing of a facial covering;
- (3) The individual is communicating or seeking to communicate with someone who is hearing-impaired or has another disability, where the ability to see the mouth is essential for communication;
- (4) The individual is alone in an enclosed space, such as an office, and which space is not intended for use or access by the public;
- (5) The individual is actively engaged in exercise in a gym or indoor facility so long as six or more feet of separation between individuals exists;
- (6) The individual is actively participating in athletic practice, scrimmage, or competition that is permitted under a separate Ohio Department of Health order;
- (7) The individual is actively engaged in a public safety capacity, including but not limited to law enforcement, firefighters, or emergency medical personnel;
- (8) The individual is seated and actively consuming food or beverage in a restaurant or bar;
- (9) The individual is actively participating in broadcast communications;
- (10) The individual is an officiant of a religious service;
- (11) When facial coverings are prohibited by law or regulation;
- (12) When facial coverings are in violation of documented industry standards; or
- (13) When facial coverings are in violation of a business's documented safety policies.

Section 602.03 Civil Penalties and Enforcement

- (a) Any person who violates any provision of Section 602.02 shall be subject to a civil penalty of \$25.00 for each offense.
- (b) The civil penalties prescribed in this section are in addition to any rights, remedies, or other penalties provided by law.
- (c) In addition to Cleveland Police Officers, this chapter may be enforced by the Director of Public Health or the Commissioner of Environmental Health, and any other officer or employee designated by them to enforce the City's Health Code.

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Section 602.04 Appeals

A civil penalty imposed under Section 602.03 may be appealed to the Directors of Public Safety and Public Health (“Directors”), or their designees, within ten (10) days after receipt of the civil penalty. The Directors shall grant the appeal or conduct a hearing, which may be virtual, within thirty (30) days. The Directors shall have jurisdiction to affirm or reverse the civil penalty. A person aggrieved by a final decision of the Directors may further appeal to the Board of Zoning Appeals within thirty (30) days after the Directors’ written decision.

Section 602.05 Severability

If any portion of this chapter, or any section or part of a section is declared by a court of competent jurisdiction to be invalid, the declaration must be limited solely to that portion, section, or part of a section that was directly involved in the controversy before the court on which judgment was rendered and may not affect or impair the validity of the remainder of this chapter.

Section 602.06 Expiration

This Chapter 602 shall expire upon the termination of the Mayor’s Proclamation of Civil Emergency in the City of Cleveland dated March 11, 2020, as amended.

Section 437.30 Passenger Facial Coverings in Vehicles for Hire During the COVID-19 Pandemic

(a) No person shall operate a taxicab or public hack, as defined in Section 443.011, a private car service, a ride sharing, vehicle, or any other motor vehicle for hire, as defined in Section 401.30, (collectively “For Hire Vehicle”) to transport any individuals unless all individuals contained therein have a facial covering, as defined in Section 602.01.

(b) Division (a) of this section does not apply to any person who is exempted under division (c) of Section 602.02.

(c) Any person who violates division (a) of this section as an operator shall be subject to a civil penalty of \$25.00 for each individual passenger failing to wear a facial covering, unless exempted as stated in division (b).

(d) A civil penalty imposed under division (c) of this section may be appealed to the Directors of Public Safety and Public Health (“Directors”), or their designees, within ten (10) days after receipt of the civil penalty. The Directors shall grant the appeal or conduct a hearing, which may be virtual, within thirty (30) days. The Directors shall have jurisdiction to affirm or reverse the civil penalty. A person aggrieved by a final decision of the Directors may further appeal to the Board of Zoning Appeals within thirty (30) days after the Directors’ written decision.

(e) Notwithstanding any provision of the law to the contrary, no law enforcement officer shall cause an operator of a for hire vehicle being operated on any street or highway to stop the vehicle for the sole purpose of determining whether a violation of division (a) of this section has been or is being committed or for the sole purpose of issuing a citation for a violation of that nature, and no law enforcement officer shall view the interior or visually inspect any for hire vehicle being operated on

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any street or highway for the sole purpose of determining whether a violation of that nature has been or is being committed.

(f) The civil penalties prescribed in this section are in addition to any rights, remedies, or other penalties provided by law.

(g) This Section 437.30 shall expire upon the termination of the Mayor's Proclamation of Civil Emergency in the City of Cleveland dated March 11, 2020, as amended.

Chapter 236 Requirements to Implement Dine Safe Ohio Order

Section 236.01 Definitions

(a) The words in this chapter shall have the meaning given to them in Section 602.01 of the Cleveland Codified Ordinances.

(b) "Operator" means a person who owns, controls, operates, or maintains a business that is subject to the Ohio Director of Health's Dine Safe Ohio Order dated June 5, 2020 ("Dine Safe Ohio Order") and as thereafter amended.

Section 236.02 Facial Coverings, Social Distancing and Capacity Requirements

(a) No person shall operate a business that is subject to the Dine Safe Ohio Order or any amendments thereto unless the business complies with the following:

(1) Requires all employees who interact with the public or other employees to wear a facial covering, except for employees who are not required by any Ohio Department of Health's order to wear a facial covering, including, but not limited to the following:

A. When facial coverings in the work setting are prohibited by law or regulation;

B. When facial coverings are in violation of documented industry standards;

C. When facial coverings violate the business' documented safety policies;

D. When the employee is working alone in an assigned work area not open to the public; and

E. When a functional (practical) reason exists for an employee not to wear a facial covering.

(2) Requires all individuals consuming food or beverage to be seated.

(3) Establishes the required maximum dining capacity by using updated COVID-19 compliant floor plans as set forth in the Dine Safe Ohio Order or as thereafter amended that ensures that all individuals must be seated to consume food or beverage. As used here "dining capacity" includes those who are consuming food, those who are consuming beverages, and those who are consuming both.

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(4) Posts at all public entrances the maximum dining capacity, a copy of the COVID-19 compliant floor plan, as described in subdivision (a)(3) of this section, and the maximum reservation or party size limitation as set forth in Dine Safe Ohio Order or as thereafter amended.

(5) If the business has an open congregate area for dancing or other activities, as described in the Dine Safe Ohio Order and any amendments thereto, the business shall establish a capacity limit for each such area, which capacity limit complies with the social distancing requirements in the Dine Safe Ohio Order and any amendments thereto, and shall post a notice of each such capacity in each area where individuals can easily see and read the notice. The capacity for open congregate areas is not in addition to the dining capacity.

(6) The social distancing requirements in the Dine Safe Ohio Order and any amendments thereto.

(7) Requires all individuals entering and remaining in the business to wear a facial covering at all times, unless an individual is exempted under division (c) of Section 602.02 of the Cleveland Codified Ordinances.

(b) No employee of a place of business who is required to wear a facial covering under the Dine Safe Ohio Order and any amendments thereto shall fail to do so.

(c) No person owning or operating a place of business shall fail to provide, within ten days of receiving a written request from the City, a written justification why an employee is exempt from wearing a facial covering.

Section 236.03 Emergency Nuisance and Abatement Order

Any place of business that is operated in violation of the provisions of this chapter is declared to be an emergency nuisance, and an abatement order may be summarily issued to the operator to be complied with immediately or the Director of Public Health, or any authorized City officer or employee, shall take such action as is necessary to remedy the emergency nuisance condition.

Section 236.04 Responsibility of the Operator

Every act or omission of an agent or employee that constitutes a violation of any provision of this chapter shall be deemed the act or omission of the operator if such act or omission occurs with the approval of the operator, or as a result of the operator's negligent failure to supervise the agent's or employee's conduct. The operator shall be punished for such act or omission in the same manner as if the operator committed the act or caused the omission.

Section 236.05 Civil Penalties and Enforcement

(a) Any person who violates subdivision (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), or (a)(7) of Section 236.02, each constituting a separate offense, shall be issued a verbal warning and, if the violation continues after a reasonable time to take corrective measures, the person shall be subject to a civil penalty of \$3,000.00 for the first offense and a civil penalty of \$5,000.00 for each subsequent violation.

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(b) Any person who violates division (b) of Section 236.02 shall be subject to a civil penalty of \$25.00 for each violation.

(c) The Director of Public Health or the Commissioner of Environmental Health, and any other officer or employee designated by them, and any Cleveland Police Officer may enforce the provisions of this chapter.

(d) The civil penalties prescribed in this section are in addition to any rights, remedies, or other penalties provided by law.

Section 236.06 Appeals

A civil penalty imposed under Section 236.05 may be appealed to the Directors of Public Safety and Public Health (“Directors”), or their designees, within ten (10) days after receipt of the civil penalty. The Directors shall grant the appeal or conduct a hearing, which may be virtual, within thirty (30) days. The Directors shall have jurisdiction to affirm or reverse the civil penalty. A person aggrieved by a final decision of the Directors may further appeal to the Board of Zoning Appeals within thirty (30) days after the Directors’ written decision.

Section 236.07 Expiration

This Chapter 236 shall expire upon the termination of the Ohio Director of Health’s Dine Safe Ohio Order dated June 5, 2020 (“Dine Safe Ohio Order”) or any amendment, whichever is later.

Chapter 238 **Sanitization after COVID-19 Positive Employee**

Section 238.01 Definitions

(a) “Covered businesses” include any for-profit, non-profit, educational entities, or government entities (other than federal) regardless of the nature of service, the function it performs, or its corporate or entity structure and does not include schools, as defined in division (e) of Section 602.01 of the Cleveland Codified Ordinances, or jails or prison facilities.

(b) “Sanitize” means to perform environmental cleaning consistent with the guidance from the Centers for Disease Control and Prevention for cleaning and disinfecting for COVID-19, which cleaning includes using cleaning agents that are known to kill the coronavirus on all surfaces, including, without limitation, workstations, countertops, railings, door handles, equipment, machinery, work tools, walls, and barriers.

Section 238.02 Sanitization After COVID-19 Positive Employee

(a) If any covered business learns that one of its employees tests positive for COVID-19 and that employee was present in the business while symptomatic, that business shall sanitize as described in division (b) of Section 238.01 before that covered business may be open to the public.

(b) No covered business shall open to the public until it completes the sanitization required in division (a) of this Section.

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Section 238.03 Civil Penalties and Enforcement

(a) Any person who violates division (b) of Section 238.02 shall be subject to a civil penalty of \$3,000.00 for each offense.

(b) The civil penalties prescribed in this section are in addition to any rights, remedies, or other penalties provided by law.

(c) The Director of Public Health or the Commissioner of Environmental Health, and any other officer or employee designated by them, and any Cleveland Police Officer may enforce the provisions of this chapter.

Section 238.04 Appeals

A civil penalty imposed under Section 238.03 may be appealed to the Directors of Public Safety and Public Health (“Directors”), or their designees, within ten (10) days after receipt of the civil penalty. The Directors shall grant the appeal or conduct a hearing, which may be virtual, within thirty (30) days. The Directors shall have jurisdiction to affirm or reverse the civil penalty. A person aggrieved by a final decision of the Directors may further appeal to the Board of Zoning Appeals within thirty (30) days after the Directors’ written decision.

Section 238.05 Expiration

This Chapter 238 shall expire upon the termination of the Mayor’s Proclamation of Civil Emergency in the City of Cleveland dated March 11, 2020, as amended.

Section 3. That this ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

SM:nl
7-15-20
FOR: Mayor Jackson

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REPORT
after second Reading

By Mayor Jackson and Council Members Griffin, Zone and Kelley

AN EMERGENCY ORDINANCE

To supplement the Codified Ordinances of Cleveland, Ohio, 1976, by enacting new Sections 602.01 to 602.06 relating to facial coverings and social distancing, Section 437.30, relating to passenger facial coverings in vehicles for hire during the COVID-19 Pandemic, Sections 236.01 to 236.07 relating to the Dine Safe Ohio Order, and Sections 238.01 to 238.05 relating to sanitization after COVID-19 positive employee.

READ FIRST, SECOND AND THIRD TIME

READ FIRST TIME

REPORTS

and referred to

CITY CLERK

READ SECOND TIME

CITY CLERK

READ THIRD TIME on JULY 15, 2020

PRESIDENT

CITY CLERK

APPROVED

MAYOR

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