



CITY OF KEY WEST

STATE OF LOCAL EMERGENCY DIRECTIVE 2020-13 **Use of Facial Coverings and Required Health Screenings** **AMENDMENT 3** **(Changes in Bold)**

WHEREAS, Novel Coronavirus Disease 2019 (COVID-19) is a severe acute respiratory illness that can spread among humans through respiratory transmission and causes symptoms similar to those of influenza and, in some cases, cause death; and

WHEREAS, on March 9, 2020, the Governor of declared a State of Emergency because of COVID-19; and

WHEREAS, on March 15, 2020, at 3:15 p.m. the City of Key West declared a State of Local Emergency; and

WHEREAS, the Centers for Disease Control (CDC) has since issued guidance entitled encouraging social distancing and maintaining a 6-foot separation between residents to slow the spread of infection and to avoid large and small gatherings in private places and public spaces of more than ten (10) people; and for individuals to cover their mouths and noses with a cloth face cover when around others, including when they have to go out in public; and

WHEREAS, the CDC strongly advises that reopening of communities include full observance of the social distancing, facial covering, and sanitation requirements stated in the CDC Guidelines in order to minimize the risk of a dramatic increase in infections that might overwhelm the available public health resources and require reclosure of amenities and businesses; and

WHEREAS, on June 15, 2020, the CDC issued updated Guidance titled "Venturing Out? Be Prepared and Stay Safe" where the CDC stated "[b]eing in a group with people who aren't social distancing or wearing cloth face coverings" increases your risk" of contracting COVID-19; and which recommends keeping on hand "a cloth face covering, tissues, and a hand sanitizer with at least 60% alcohol" when venturing out, and

WHEREAS, in various executive orders, culminating with his order dated May 18, 2020, Governor DeSantis allowed certain types of businesses to operate and/or expand their services, and has allowed local government to implement additional restrictions and measures; and

WHEREAS, the County of Monroe issued Emergency Directive 20-09, which effective June 1, 2020, allows tourists and leisure visitors to enter Monroe County and lodging establishments to resume operations; and

WHEREAS, the City’s various emergency directives thereafter require facial coverings, as defined by the United States Centers for Disease Control and Prevention (CDC), to be worn by persons working in or visiting grocery stores, restaurants, public transit vehicles, vehicles for hire, and locations where social distancing measures are not possible and/or difficult to enforce; and

WHEREAS, on June 26, 2020, the City of Key West adopted Emergency Ordinance 20-07 which requires individuals to use facial coverings as defined in the ordinance with enumerated exceptions, penalties, and enforcement mechanisms; and

WHEREAS, the number of infections has increased dramatically since adoption of the face coverings ordinance; and

WHEREAS, on July 1, 2020, Florida Department of Business Regulation issued Amended Emergency Order 2020-09 disallowing the consumption of alcohol on the premises of certain business establishments due to the increase in infections and disregard for the restrictions set forth in Phase 2 of the Safe. Smart. Step-by-Step. Plan for Florida’s Recovery; and

WHEREAS, on June 25, 2020, the Florida Supreme Court concluded that a pandemic is a “natural emergency” within the meaning of Section 252.34(8), Florida Statutes and that the government may enact emergency orders pursuant to the State Emergency Act. *Abramson v. DeSantis*, No. SC20-646 (Fla. June 25, 2020); and

WHEREAS, pursuant to Section 252.46, Florida Statutes, political subdivisions are authorized and empowered to make, amend, and rescind such orders and rules as are necessary for emergency management purposes and to supplement the carrying out of the provisions of Sections 252.31-252.90, Florida Statutes, such orders and rules have full force and effect of law, and all existing laws, ordinances, and rules inconsistent with any order or rule issued under the authority of such statute shall be suspended during the period of time and to the extent that such conflict exists; and

WHEREAS, the City has issued eighteen emergency directives as the enactment of the local state of emergency undertaken pursuant to Florida Statutes permits the City of Key West to take whatever action is necessary to insure the health, safety and welfare of the community; and

WHEREAS, it is necessary and appropriate to take action to ensure that COVID-19 remains controlled, and that residents in the City of Key West remain safe and secure and that any reopening promotes business operation and economic recovery while maintaining focus on core safety principals; and

WHEREAS, the Third District Court of Appeal has defined the term business establishment to mean “a location where business is conducted, goods are made or stored or processed or where services are rendered.” *Publix Supermarkets, Inc. v. Santos*, 118 So.3d 317 (Fla. 3d DCA 2013); and

WHEREAS, the City of Key West is issuing this amended directive regarding face coverings in response to the increase of infections in both the City and the County of Monroe.

NOW THEREFORE, as Mayor and City Manager of the City of Key West, we hereby order the following:

A. Senior citizens and individuals with a significant underlying condition are strongly encouraged to avoid crowds and take measures to limit the risk of exposure to COVID-19.

B. Definitions.

1. **“Face Covering” shall mean a material that covers the nose and mouth and may include a face mask, homemade mask, or other cloth covering, such as a scarf, bandana, handkerchief or other similar cloth covering. Face covering shall not include the use of face shields.**
2. **“Social Distancing” shall mean keeping space between yourself and other persons by staying at least 6 feet away from other person(s).**
3. **“Business Establishment” is defined as a location where business is conducted, goods are made or stored or processed or where services are rendered. The term “business establishment” shall also include locations where non-profit, governmental, and quasi-governmental entities facilitate public interactions and conduct business. The definition shall include the entire premises of the business establishment, whether owned or leased, or indoors or outdoors.**
4. **“Lodging Establishment” shall have the same meaning as the term “transient public lodging establishment” as defined in § 509.013(4)(a)(1), Fla. Stat. (2019). A lodging establishment is a type of business establishment and any reference to business establishment shall include a lodging establishment.**
5. **“Operator” shall mean any individual or entity that owns a business or that controls the operation of a business, even if only for a period of time, regardless of the formal title or role held by that individual or entity.**

C. Face Covering requirements.

1. **Every person over the age of six (6), while physically located within the City of Key West, and who is away from their residence, shall wear a face covering at all times, regardless of whether social distancing is also maintained.**
2. **The operator and/or employee of a business establishment shall ensure that every individual while on the premises of that establishment complies with this section.**

D. Face Covering exceptions. Every person over the age of six (6), while physically located within the City of Key West, and who is away from their residence, shall carry a face covering capable of immediate use. However, the requirements of section C. are subject to the following exceptions:

1. **A lodging establishment guest(s) while inside the lodging unit including a hotel room, motel room, vacation rental unit, timeshare unit, or similar unit.**

2. Public safety, fire, law enforcement, and other life safety personnel, as their personal protective equipment requirements will be governed by their respective agencies, which shall include facial coverings for City of Key West personnel.
3. **Restaurant patrons who are seated at a table and eating or drinking. Persons who are not seated and are on the premises of a business establishment, whether indoors or outdoors, shall wear a face covering at all times.**
4. Patrons or clients of Barbershops or Cosmetology Salons who are seated and when wearing a face covering would reasonably interfere with receiving services. Persons who are not seated and are on the premises of a business establishment, whether indoors or outdoors, shall wear a face covering at all times.
5. **Face coverings are not required while a person is in a private, non-commercial enclosed vehicle or private, non-commercial vessel.**
6. **These requirements do not apply within a workplace area not otherwise open to the public while a person is complying with engineering, administrative, and work practice controls and/or personal protective equipment (PPE) requirements, developed in accordance with the United States Occupational Safety and Health Administration (OSHA) mitigation and contingency planning document entitled "Guidance for Preparing Workplaces for COVID-19" (as it may be amended, supplemented, or superseded from time to time).**

E. Defenses. An owner, operator, agent, manager, and/or employee (collectively "operator/employee") of a business establishment shall not be liable in any enforcement action taken under this section for the violations of a guest, customer, and/or patron if that operator/employee directed that guest, customer, and/or patron, who refuses to comply with the provisions of this Ordinance, to vacate the premises or face a trespass warning or prosecution of trespass.

F. The intent of the covering is to protect the health of the residents and visitors of the City of Key West and is in no way intended to allow the wearer to intentionally conceal their identity.

G. Health and Temperature Screenings. The following health screening requirements shall apply for all business establishments permitted to operate within the City of Key West. Social distancing requirements must be maintained whenever possible even when temperature screenings are required; temperature screenings are in addition to, and not a substitute for, appropriate social distancing.

1. Health and Temperature Screenings for Employers and Employees are Required.
 - i. All businesses establishments must screen and evaluate workers who exhibit signs of illness. Employers shall take the temperature daily of all employees reporting to work utilizing infrared or non-contact thermometers. Any employee testing at or above 100.4 degrees Fahrenheit may indicate a medical issue that could be transmitted to others. The employee shall be sent home with a recommendation to consult a medical professional. All actions

taken by the Employers shall be consistent with the guidance provided by the Equal Employment Opportunity Commission (EEOC).

- ii. Employees who appear to have signs or symptoms of illness upon arrival at work or who become sick or have signs or symptoms of illness during the day must immediately be separated from other employees, customers, clients, guests and visitors, and sent home.
2. Health and Temperature Screenings for customers, clients, guests and/or patrons are strongly recommended when not maintain social distancing from other persons, excluding Household Members and members of the same travel group.
3. For purposes of this directive, "Employee", "Employees" or "Workers" shall also include owner(s), independent contractor(s), trainer(s), tenant(s), sub-tenant(s), lessee(s), sub-lessee(s), etc.

H. The Key West Police Department, code enforcement officers, and any other personnel as provided for in the Florida Statutes or the City of Key West Code of Ordinances may enforce this Emergency Directive and all other applicable City of Key West Emergency Directives against any person, business establishment or entity violating any provision of any such Emergency Directive. All such enforcing authorities are authorized to enforce the provisions of the City of Key West Emergency Directives as a civil citation, administrative notice of violation and/or as a criminal violation, including as authorized by City of Key West Code of Ordinances Section 20-07, section 5, and as hereby authorized by the City of Key West. Violations of City of Key West Emergency Directives may be prosecuted as criminal violations in the same manner as misdemeanors are prosecuted, including fines not to exceed \$500 per violation, imprisonment not to exceed 60 days, or both, and/or as an administrative notice of violation including fines of \$250 per day per violation for a first violation, \$500 per day per violation for a repeat violation or fines of up to \$5,000 per violation for a violation that is irreparable or irreversible in nature and/or as a civil citation to appear in county court not to exceed \$500 per violation.

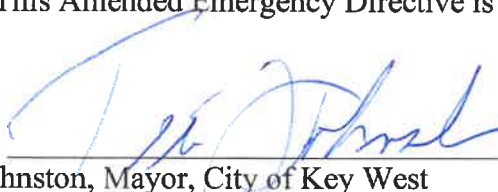
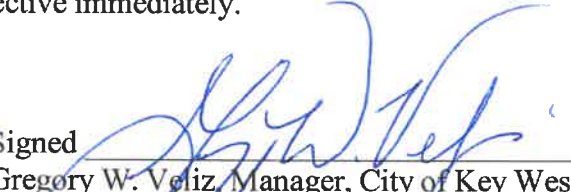
I. This Emergency Directive shall be enforced pursuant to Chapter 252, Florida Statutes and/or any and all applicable Statutes, Ordinances, Emergency Orders and Executive Orders.

J. This Directive does not affect or limit the operations of the City of Key West, any public utility, the Monroe County School District, or any County, State or Federal office or facility, except that such entities shall abide by the restriction of any County, municipal, State or Federal emergency order, as applicable.

K. The provisions of this Directive shall serve as minimum standards in conjunction with all Emergency Directives and Executive Orders previously issued and remain in force and effect unless modified or superseded. In the event of any conflict, the more restrictive measure shall control. If any provision herein, or portion thereof, is held to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this directive shall continue in full force and effect.

L. The conditions specified herein shall be assessed daily and this Directive shall remain in effect until superseded, repealed or upon expiration of the local state of emergency, including any extensions thereof.

M. This Amended Emergency Directive is effective immediately.

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| Signed:  | Signed:  |
| Teri Johnston, Mayor, City of Key West | Gregory W. Veliz, Manager, City of Key West |
| Date: <u>7-13-20</u> | Date: <u>7-13-20</u> |
| Time: <u>11:38 AM</u> | Time: <u>11:39 pm</u> |