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MEMORANDUM

TO: Mayor Sivertsen
Members of the City Council
City Manager

FROM: *M* Mitch Seaver
City Attorney

DATE: July 1, 2020

SUBJECT: Face Covering Ordinance

Upon review of the proposed ordinance requiring cloth face coverings in public, I am concerned that Section 4A would be construed so as to not include children who are 17 years old. Therefore, I am recommending the ordinance be amended before passage as set forth below.

Recommended Motion:

I hereby move that Section 4A of proposed Ordinance 20-1916 be amended by deleting the phrase "between the ages of 5 and 17," and substitute the phrase, "ages 5 through 17 inclusive" therefor.

A copy of the proposed ordinance with the amendment included is transmitted herewith.

THE CITY OF KETCHIKAN, ALASKA

ORDINANCE NO. 20-1916

AN EMERGENCY ORDINANCE OF THE COUNCIL OF THE CITY OF KETCHIKAN DECLARING AN EMERGENCY AND REQUIRING CLOTH FACE COVERINGS IN PUBLIC DUE TO THE COVID-19 PANDEMIC; AND; ESTABLISHING AN EFFECTIVE DATE;

RECITALS

A. WHEREAS, the United States Centers for Disease Control (CDC) has determined that COVID-19, is a respiratory disease that can result in serious illness or death and that it is a new strain of coronavirus not previously identified in humans; and

B. WHEREAS, the United States Department of Health and Human Services Secretary Alex Azar declared a public health emergency for COVID-19 on January 31, 2020, retroactively applicable to January 27, 2020; and

C. WHEREAS, on March 11, 2020 Alaska Governor Mike Dunleavy issued a declaration of public disaster emergency in response to the anticipated outbreak of COVID-19 in Alaska, in order to ensure that the public is educated about the public risk; and

D. WHEREAS, the United States Centers for Disease Control and Prevention and the Alaska Department of Health and Social Services have recommended that members of the public, when they need to interact with others outside the home, should cover the mouth and nose to prevent inadvertently spreading COVID-19; and

E. WHEREAS, one key transmission method for the COVID-19 virus is through respiratory droplets that people expel when they breathe, speak, cough, or sneeze. Moreover, people can be infected with the COVID-19 virus and be asymptomatic but still be contagious. People can also be infected and contagious 48 hours before developing symptoms when they are pre-symptomatic. Many people with COVID-19 have mild symptoms and do not recognize they are infected and contagious, and they can unintentionally infect others; and

F. WHEREAS, wearing a cloth face covering, in combination with physical distancing of at least 6 feet and frequent hand-washing, may reduce the risk of transmitting the COVID-19 virus when in public and engaged in necessary activities by reducing the spread of respiratory droplets; and

G. WHEREAS, reopening Alaska's economy has increased the risk of the spread of COVID-19; and

H. WHEREAS, the adoption of an ordinance requiring all persons within the City to wear cloth face coverings when in public places where adequate physical distancing cannot be maintained is necessary to protect public health and safety.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF KETCHIKAN, ALASKA, AS FOLLOWS:

Section 1: Findings. The matters set forth in the above Recitals are hereby adopted as the findings of the Council.

Section 2: Emergency. Pursuant to Charter Section 2-14 the Council hereby declares that a public health disaster emergency exists due to the COVID-19 pandemic and that the provisions of this ordinance are necessary to immediately respond to that emergency in the interest of public health, safety and welfare.

Section 3: Face Coverings Required. Effective July 12, 2020 at 8:00 a.m. every person must wear a cloth face covering that completely and snugly covers the person's nose and mouth when the person is in public and cannot easily maintain a continuous distance of at least six feet from all other persons. For purposes of the ordinance:

- A. A "cloth face covering" may be manufactured, sewn by hand or improvised such as a scarf or bandana and does not include any mask that incorporates a one-way valve that is designed to facilitate easy exhaling.
- B. The term "in public" means in any place indoors other than a person's own home (including residing in a domestic abuse shelter) which includes, but is not limited to, businesses or other establishments or locations where people congregate or members of the general public may enter; offices; public buildings; motor vehicles, watercraft and public transportation, including taxicabs and ride sharing.

Section 4: Exemptions. The following persons are exempt from the requirements set forth in Section 3 of this ordinance:

- A. Children under the age of 5. Parents, guardians or others with custody or control are responsible for ensuring that children ages 5 through 17 inclusive wear appropriate face coverings when required under this ordinance. Any child age two years or less must not wear a face covering due to the risk of suffocation.
- B. Persons with a medical condition, mental health condition, or disability that prevents wearing a face covering. This includes, but is not limited to, persons with a medical condition for whom wearing a face covering could obstruct breathing or who are unconscious, incapacitated, or otherwise unable to remove a face covering without assistance.
- C. Persons who are hearing impaired and use face and mouth movements as part of communication and persons who are communicating with a person who is hearing impaired, where the ability to see the face and mouth is essential for communication.

- D. Persons for whom 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.
- E. Persons who are obtaining a service that requires for temporary removal of the face covering.
- F. Persons who are eating or drinking at a restaurant or other establishment that offers food or beverage service, so long as the person is able to maintain a distance of 6 feet away from persons who are not members of the same household as the person.
- G. Any member of a group of persons who are in a public place together and live in the same household so long as the group can easily maintain a continuous physical distance of at least 6 feet from all other persons not part of the same household.
- H. Persons who are engaged in outdoor work, recreation or exercise, when alone or as part of a group of people who live in the same household so long as they are able to easily maintain a continuous physical distance of at least 6 feet from all other persons not part of the same household.
- I. Persons who are incarcerated.
- J. Persons who are swimming.

Section 5: Refusal of Entry.

Persons with the authority to control places open to the public and in which continuous physical distancing of at least 6 feet between persons cannot be easily maintained may refuse to allow a person who is not exempt under Section 4 and who is not wearing a cloth face covering to enter the premises and may request that a person on the premises leave if the person is not exempt under Section 4 and is not wearing a cloth face covering.

Section 6: Violations - Penalty.

(a) It is unlawful for any person to violate any provision or to fail to comply with any of the requirements of this ordinance. Any person violating any of the provisions or failing to comply with any of the mandatory requirements of this ordinance shall upon conviction thereof be punished by a fine of not more than \$500.00. Each such person shall be guilty of a separate offense for each separate instance that any violation of any provision of this ordinance is committed, continued, or permitted by such person and shall be punished accordingly.

(b) In addition to any fines or other penalties imposed under this ordinance, any person violating any of the provisions of this ordinance shall pay any surcharges required

by law. Such surcharges shall be collected in the same manner as fines or by such other means as may be practical.

Section 7: Savings Clause.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional.

Section 8: Effective Date - Duration. This ordinance shall become effective immediately upon final passage and remain effective until November 1, 2020 unless earlier extended by the Council by ordinance or rescinded by a motion of the Council.

FINAL PASSAGE _____.

Robert Sivertsen, Mayor

ATTEST:

Kim L. Stanker
City Clerk

FYI: Bracketed language is intended to be removed from the existing ordinance, and underlined language in bold type is intended as an addition to the existing Ketchikan Municipal Code.

EFFECTIVE	DATE: *		
ROLL CALL	YEA	NAY	ABSENT
BERGERON			
CHAPEL			
COOSE			
FLORA			
GAGE			
KIFFER			
ZENGE			
MAYOR			