

ORDINANCE NO. 2020-04

AN URGENCY ORDINANCE TO ADOPT THE CALIFORNIA DEPARTMENT OF PUBLIC HEALTH'S GUIDANCE FOR THE USE OF FACE COVERINGS TO BE ENFORCEABLE BY ADMINISTRATIVE CITATION WITHIN THE CITY OF MARINA  
THE CITY COUNCIL OF THE CITY OF MARINA DOES ORDAIN AS FOLLOWS:

WHEREAS, international, national, state, and local health and governmental authorities are responding to an outbreak of respiratory disease caused by a novel coronavirus named COVID-19; and

WHEREAS, on March 4, 2020, the Governor of the State of California proclaimed a state of emergency to make additional resources available, formalize emergency actions already underway across multiple state agencies and department, and help the state prepare for the broader spread of COVID-19; and

WHEREAS, on March 11, 2020, the World Health Organization declared the COVID-19 outbreak a global pandemic; and

WHEREAS, on March 13, 2020, the President of the United States of America declared a national emergency due to the spread of COVID-19; and

WHEREAS, in accordance with subsection 6.a. of section 2.20.020 of Chapter 2.20 of the Marina Municipal Code, in the event of the proclamation of a local emergency or the proclamation of a state of emergency by the Governor, the Director of Emergency Services is empowered to make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by such emergency; and

WHEREAS, on Friday, March 13, 2020, the City Manager, in his role as the Director of Emergency Services, proclaimed the existence of a local emergency pursuant to Chapter 2.20 of the Marina Municipal Code to ensure an effective response by the City to the COVID-19 pandemic; and

WHEREAS, on March 17, 2020, in Resolution 2020-29, the City Council ratified said Proclamation; and

WHEREAS, on March 19, 2020, the Governor of the State of California issued Executive Order N-33-20, ordering all individuals in the State of California to stay home or at their place of residence, except as outlined by the California Department of Public Health, during the COVID-19 pandemic for the preservation of public health and safety throughout California and to ensure that the healthcare delivery system is capable of serving all, including those at higher risk and the most vulnerable. Executive Order N-33-20 requires all Californians to heed the state public health directives; and

WHEREAS, on March 17, 2020, the Monterey County Health Officer issued a shelter in place order that was amended on April 3, 2020; April 28, 2020; May 1, 2020; and May 8, 2020; and

WHEREAS, ON April 28, 2020, the Monterey County Health Officer issued an Order requiring that people wear face coverings in certain settings and situations; and

WHEREAS, on May 26, 2020, the Monterey County Health Officer issued an Order that was effective upon posting by the California Department of Public Health on its website, stating the Health Officer's Attestation for a Variance through Stage 2 of the State's Roadmap to Pandemic Resilience; and

WHEREAS, the May 26, 2020, Order suspended the May 1, 2020 and May 8, 2020 Orders of the Health Officer and left, among other matters, the April 28, 2020 (facial coverings) and May 3, 2020 (short term lodging facilities) orders in effect; and

WHEREAS on June 18, 2020, the California Department of Public Health (CDPH) released Guidance for the Use of Face Coverings (Guidance), which was updated on June 29, 2020. According to CDPH Guidance, "we have learned a lot about COVID-19 transmission, most notably that people who are infected but are asymptomatic or pre-symptomatic play an important part in community spread. The use of face coverings by everyone can limit the release of infected droplets when talking, coughing, and/or sneezing, as well as reinforce physical distancing;" and

WHEREAS, on July 2, 2020, the California Department of Public Health placed Monterey County on the COVID-19 County Data Monitoring Project watch list in response to elevated disease transmission as evidenced by Monterey County exceeding the State's 14-day case threshold of 100 cases per 100,000 residents, the percent of skilled nursing facilities with no new cases in the last 14 days, and by exceeding the State's threshold for percent change in three-day average COVID-19 hospitalizations; and

WHEREAS, following Monterey County's placement on the watch list on July 6, 2020, on July 7, 2020, the California Department of Public Health issued an Order stating that in addition to the impact on the general population, community spread increased the likelihood of expanded transmission of COVID-19 and directed restrictions for Monterey County on indoor operations for the following sectors: restaurants, wineries, movie theaters, zoos, museums and card rooms while leaving intact all other Orders, Guidance and directives including guidance mandating the wearing of face coverings; and

WHEREAS, according to the Monterey County Daily Situational Report dated August 25, 2020, there are 7,393 confirmed cases of COVID-19, 448 cumulative hospitalizations, 53 fatalities, 4,602 contacts, and a test positivity rate of 11.05% in Monterey County, with increasing rates in recoveries, 17,502 throughout the County; and

WHEREAS, "The CDC (Center for Disease Control), CDPH, and MCHD (Monterey County Health Department) now believe that wearing a face covering, when combined with physical distancing of at least six (6) feet and frequent hand washing, may reduce the risk of transmitting coronavirus when in public ... by reducing the spread of respiratory droplets." (Monterey County Health Officer Order dated April 28, 2020); and

WHEREAS, research has shown face coverings can significantly mitigate the spread of the virus; and

WHEREAS, under California law, Health & Safety Code section 101029, the local public health officer's orders issued for the purpose of preventing the spread of any contagious, infectious or communicable disease are enforceable by local police agencies, and people who fail to comply may be charged with a misdemeanor; and

WHEREAS, the number of infected persons in Monterey County is rising and having a high number of people in public without wearing a face covering seriously impedes community efforts to stem the local transmission of COVID-19; and

WHEREAS, THE City of Marina's code enforcement officers have received a number of complaints from City residents that the public is not heeding the Guidance; and

WHEREAS, Government Code section 36937 authorizes an urgency ordinance to take effect immediately if the ordinance is for the immediate preservation of the public peace, health, or safety, contains a declaration of the facts constituting the urgency and if the ordinance is passed by a four-fifths (4/5) vote of the City Council; and

WHEREAS, it is the intent of this urgency ordinance to provide a tool, in addition to educational efforts, to compel compliance with the Guidance by authorizing enforcement of the orders of the Monterey County Health Officer through the issuance of administrative citations pursuant to the general application of procedures established in Marina Municipal Code Chapter 1.12.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MARINA that it hereby ordains, finds, declares, determines, and orders as follows:

1. The recitals set forth above are incorporated herein as if fully set forth, are true and correct, and are adopted as findings of the City Council. Based on the fact stated in the recitals this urgency ordinance is hereby declared by the City Council of the City of Marina to be necessary for the protection of the public health, safety and welfare.

2. That the immediate effective date of this urgency ordinance is necessary to avoid the immediate threat to public peace, health and safety, as failure to adopt this urgency ordinance would impede efforts to stem the local transmission of COVID-19. The City has a compelling interest to stop the spread of this communicable disease, and authorizing an administrative enforcement tool for failure to comply with the Monterey County Health Officers Order of April 28, 2020, and adherence to the CDPH's Guidance is a narrowly tailored means of achieving that objective.

3. The CDPH Guidance and exemptions, attached hereto as Exhibit A, and as may be amended from time to time, is hereby expressly adopted, acknowledged and declared to be enforceable within the City of Marina as if directly enacted by the City pursuant to Marina Municipal; Code section 2.20. The failure to comply with the Order of the Monterey County Health Officer and the CDPH Guidance is a public nuisance.

4. Any individual who violates the Guidelines is in violation of this urgency ordinance and is subject to administrative citations under Marina Municipal Code sections 1.12.010 through 1.12.110. The code section violated shall be given as “Monterey County Health Officer’s Order/CDPH Guidance-Face Covering.” The fine amount for the first violation is \$100, the second violation is \$150, and the third and each violation thereafter is \$200.

5. The City Council declares that each section, subsection, paragraph, subparagraph, sentence, clause and phrase of this urgency ordinance is severable and independent of every other section, subsection, paragraph, subparagraph, sentence, clause and phrase of this ordinance. If any section, subsection, paragraph, subparagraph, sentence, clause or phrase of this ordinance is held invalid, the City Council declares that it would have adopted the remaining provisions of this ordinance irrespective of the portion held invalid, and further declares its express intent that the remaining portions of this ordinance should remain in effect after the invalid portion has been eliminated.

6. This Ordinance shall not be codified. This ordinance shall be liberally construed to provide the best possible protection for the community. All ordinances and parts of ordinances in conflict herewith are hereby repealed.

7. This ordinance shall be effective immediately upon adoption. This ordinance shall terminate and be of no further force and effect when the Guidelines are terminated by the CDPH or when it is terminated by the City Council, whichever occurs first.

8. The City Council finds this urgency ordinance is exempt from environmental review under the California Environmental Quality Act (“CEQA”) as an emergency project pursuant to California Public Resources Code section 21080(b)(4) as an action to mitigate and emergency, and pursuant to CEQA Guideline 15269 (c) (14 CCR 15269) as a specific action to mitigate an emergency.

9. After the passage of this ordinance, the Deputy City Clerk shall cause it to be posted in the three places in the City designated by resolution of the Council.

PASSED AND ADOPTED by the City Council of the City of Marina at regular meeting duly held on September 1, 2020, by the following vote:

AYES: COUNCIL MEMBERS: Berkley, O’Connell, Morton, Delgado

NOES: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: None

ABSTAIN: COUNCIL MEMBERS: None

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Bruce C. Delgado, Mayor

ATTEST:

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Anita Sharp, Deputy City Clerk

August 27, 2020

Item No: **81(2)**

Honorable Mayor and Members  
of the Marina City Council

City Council Meeting  
of September 1, 2020

**CITY COUNCIL CONSIDER READING BY TITLE ONLY,  
INTRODUCING AND ADOPTING AN URGENCY ORDINANCE TO  
ADOPT THE CALIFORNIA DEPARTMENT OF PUBLIC HEALTH'S  
GUIDANCE FOR THE USE OF FACE COVERINGS TO BE  
ENFORCEABLE BY ADMINISTRATIVE CITATION WITHIN THE CITY  
OF MARINA.**

**REQUEST:**

It is requested that the City Council:

1. Read by title only and introduce and adopt an urgency ordinance to adopt the California Department of Public Health's Guidance for the use of face coverings to be enforceable by administrative citation within the City of Marina.

**BACKGROUND:**

At your adjourned regular meeting on August 21, 2020, the Council provided direction to prepare an urgency ordinance to protect the public's health, safety and welfare through civil enforcement of the requirement to wear face coverings within the City to prevent the spread of COVID-19.

**ANALYSIS:**

Having a civil enforcement tool available whereby fines could be assessed using the provisions of Chapter 1.12 "Administrative Fines" of the Marina Municipal Code will encourage compliance with wearing face coverings in accordance with the Monterey County Health Officer's Order of April 28, 2020, and the California Department of Public Health's ("CDPH") Guidance without the need to resort to criminal enforcement by charging such offense as a misdemeanor. The proposed urgency ordinance will enable the City to enforce the Monterey County Health Officer's Order and the CDPH Guidance administratively. The fine for a first offense for not wearing a face covering in accordance with the CDPH Guidance is proposed to be \$100, for a second offense \$150, and for a third offense \$200.

Government Code section 36937(b) authorizes the City Council to adopt an urgency ordinance which contains a declaration of the facts constituting the urgency for the immediate preservation of the public peace, health and safety and requires such ordinances to be passed by at least a four-fifths vote of the City Council with the ordinance becoming effective immediately upon its passage.

**FISCAL IMPACT:**

There will be costs associated with the enforcement of the urgency ordinance. In addition to staff the City will hire an additional temporary contract code enforcement officer to assist with educating the public. The cost is estimated to be \$60.00 per hour. The revenue generated from administrative citations will be deposited to the general fund.

**CEQA**

This urgency ordinance is exempt from environmental review under the California Environmental Quality Act (“CEQA”) as an emergency project pursuant to California Public Resources Code section 21080(b)(4) as an action to mitigate and emergency, and pursuant to CEQA Guideline 15269 (c) (14 CCR 15269) as a specific action to mitigate an emergency.

**CONCLUSION**

Recommend reading by title only, introduction and adoption of the urgency ordinance, attached hereto as **EXHIBIT A**, to adopt the California Department of Public Health’s Guidance for the use of face coverings to be enforceable by administrative citation within the City of Marina.

Respectfully submitted,

*Robert W. Rathie*

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Robert W. Rathie  
City Attorney’s Office

Reviewed and Concurred by,

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Layne Long  
City Manager  
City of Marina