

## EMERGENCY ORDER NO. 20-01

### AN ORDER BY THE DIRECTOR OF EMERGENCY SERVICES OF THE CITY OF CUPERTINO REQUIRING MEMBERS OF THE PUBLIC TO WEAR FACE COVERINGS

**WHEREAS**, Cupertino Municipal Code Section 2.40.060 empowers the City Manager, as the Director of Emergency Services, to make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by a proclaimed local emergency; and

**WHEREAS**, March 11, 2020, the City Manager, serving as the Director of Emergency Services, issued a Proclamation of Local Emergency regarding the presence and community spread of the COVID-19 pandemic, and on March 17, 2020, the City Council ratified the Proclamation of Local Emergency; and

**WHEREAS**, the Director of Emergency Services does hereby find the following:

1. Santa Clara County has been coordinating with the counties of Alameda, Contra Costa, Marin, San Francisco, and San Mateo on COVID-19 response efforts. On April 17, 2020, Santa Clara County issued guidance strongly recommending that members of the public wear face coverings in certain situations. 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. This Emergency Order aligns in scope with those County orders and with the Santa Clara County's guidance regarding when to wear face coverings.
2. As of April 20, 2020, Santa Clara County had a total of 1922 confirmed cases of COVID-19. Of those cases, 23 were from Cupertino. These counts increased on April 21, 2020 when Santa Clara County had a total of 1946 confirmed cases of COVID-19. Of those cases, 24 were from Cupertino. County transmission is believed to be widespread and due to limited testing capacity, Cupertino's and even the County's counts only represent a small portion of actual cases in all likelihood.
3. 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. COVID19 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.

## EMERGENCY ORDER NO. 20-01

Page 2

4. 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 CDC 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**, the above facts give rise to conditions of extreme peril to the safety and health of persons within the City; and

**WHEREAS**, carriers of COVID-19 have been known to be asymptomatic and wearing face coverings would help reduce the chances of transmission, further protecting the community during this emergency;

**NOW, THEREFORE, IT IS HEREBY ORDERED** that effective at 12:00 p.m. on Friday, April 24, 2020, and continuing in effect until further notice from the Director of Emergency Services or the City Council:

1. As used in this Order, 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 Order; those medical grade masks should be reserved for health care providers and first responders. In general, even when not required by this Order, people are strongly encouraged to wear Face Coverings when in public. Also, 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.

Note that 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 Order and is not to be used to comply with this Order's requirements. Valves of that type permit droplet release from the mask, putting others nearby at risk.

A video showing how to make a face covering and additional information about how to wear and clean Face Coverings may be found at the website of Centers for Disease Control and Prevention, at <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/diy-cloth-face-coverings.html>.

2. 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:
  - a. When they are inside of, or in line to enter, any Essential Business (as that term is defined in Section 13.f of the Santa Clara County Health Officer's Order to Shelter in Place, dated March 31, 2020 ("SCC Shelter in Place Order")), including, but not limited to, grocery stores, convenience stores, supermarkets, laundromats, and restaurants;
  - b. When they are inside or at any location or facility engaging in Minimum Basic Operations or seeking or receiving Essential Government Functions (as defined in Sections 13.g and 13.d, respectively, of the SCC Shelter in Place Order);
  - c. When they are engaged in Essential Infrastructure work (as defined in Section 13.c of the SCC Shelter in Place Order);
  - d. When they are obtaining services at Healthcare Operations (as defined by in Section 13.b of the SCC Shelter in Place Order)—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

- e. 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.
3. Each driver or operator of any public transportation or paratransit vehicle, taxi, or private car service or ride-sharing vehicle must 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.
  4. All Essential Businesses, as well as entities and organizations with workers engaged in Essential Infrastructure work, Minimum Basic Operations, or Essential Government Functions (except for Healthcare Operations, which are subject to their own regulation regarding specified face coverings), must:
    - 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:
      - i. interacting in person with any member of the public or with coworkers;
      - ii. 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;
      - iii. working in any space where food is prepared or packaged for sale or distribution to others;
      - iv. working in or walking through common areas such as hallways, stairways, elevators, and parking facilities; or
      - v. in any room or enclosed area when other people (except for members of the person's own household or residence) are present, including coworkers.

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 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.
5. 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 Order 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.
6. 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 (as defined in Section 13.k of the SCC Shelter in Place Order), 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 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.

## EMERGENCY ORDER NO. 20-01

Page 6

7. This Order 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.
8. A Face Covering is also not required by this Order 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. A Face Covering should also not be used by anyone who has trouble breathing or is unconscious, incapacitated, or otherwise unable to remove the Face Covering without assistance.
9. The intent of this Order is to ensure that all people who are visiting or working at Essential Businesses and all people who are seeking care at healthcare facilities or engaged in certain types of 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 Order is also to ensure that people who work for or seek services from entities engaged in Essential Infrastructure work, Minimum Basic Operations, or Essential Government Functions also wear a Face Covering when they are in close proximity to others. In so doing, this Order 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 Order must be interpreted to effectuate this intent.
10. 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.
11. Violation of this Order shall be punishable through the issuance of administrative citations, fines, and penalties as set forth in Cupertino Municipal Code Chapter 1.10. Law enforcement officers of the Santa Clara County Sheriff's Office are authorized to enforce this Order.
12. If any section, subsection, sentence, clause, or phrase of this Order is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Order.

**EMERGENCY ORDER NO. 20-01**

Page 7

13. Any capitalized terms in this Order that are defined in the SCC Shelter in Place Order dated March 31, 2020 shall be automatically updated to incorporate any future revisions to that order without a need to update this Order.

The Cupertino City Council confirmed this Emergency Order in advance on April 22, 2020.

DATED this 23rd day of April, 2020.

By:   
\_\_\_\_\_

Deborah Feng

Director of Emergency Services  
City of Cupertino

ATTEST:

  
\_\_\_\_\_  
Kirsten Squarcia, City Clerk