

**CITY OF GALLUP ORDINANCE S2020-4**

**AN ORDINANCE REQUIRING THAT PERSONS OVER THE AGE OF TWO WEAR A FACE COVERING WHILE IN A PUBLIC PLACE, ESTABLISHING EXEMPTIONS, REQUIRING THAT BUSINESSES MANDATE THAT CUSTOMERS WEAR A FACE COVERING, DECLARING AN EMERGENCY, AND ESTABLISHING AN EFFECTIVE DATE AND PERIOD THAT THE ORDINANCE SHALL REMAIN IN EFFECT.**

**WHEREAS**, the Governor of the State of New Mexico issued Executive Order 2020-004 declaring a State of Health Emergency pursuant to All Hazard Emergency Act, NMSA 1978 § 12-10-1 *et.seq.*, and the Public Health Emergency Response Act, NMSA 1978 § 12-10A-1 *et.seq.*, due to the rapid spread of the COVID-19 virus; and

**WHEREAS**, the New Mexico Health Secretary issued a Public Health Order on March 23, 2020 pursuant to her authority under the Public Health Act, NMSA 1978 §24-1-1 *et.seq.*, the Public Health Emergency Response Act, NMSA 1978 § 12-10A-1 *et.seq.*, and the Department of Health Act, NMSA 1978 §9-7-1 *et.seq.*, that orders the suspension of in-person operations of all business not identified as “essential business” by the Order. The Order defines essential business in a manner that requires the closure of retailers holding “dispenser licenses” for the sale of alcohol unless the business generates the majority of its revenue from the sale of food items, pet food and supplies for the maintenance of animals, and other household consumer products; and

**WHEREAS**, Health Secretary issued additional restrictions in the Public Health Order issued on April 6, 2020 that orders retail businesses deemed essential that are allowed to remain open limit the number customers in the retail space to 20% or less of the normal occupancy load and that customers that are waiting outside of the retail space maintain a distance of at least six feet from each other; and

**WHEREAS**, the Health Secretary’s April 6, 2020 Public Health Order provides that it does not “restrain or preempt local authorities from enacting more stringent restrictions that those required by the Order,” and

**WHEREAS**, all municipalities in New Mexico have the authority to adopt ordinances that are not inconsistent with the laws of New Mexico that provide for the safety and preserve the health of the municipality and its inhabitants pursuant to NMSA 1978 §3-17-1, and

**WHEREAS**, a home rule municipality in New Mexico “may exercise all legislative powers and perform all functions not expressly denied charter municipalities by general law or charter” pursuant to NMSA 1978 §3-15-13, and

**WHEREAS**, the Centers for Disease Control and Prevention (CDC) “recommends wearing cloth face coverings in public settings where other social distancing measures are difficult to maintain (e.g., grocery stores and pharmacies) **especially** in areas of significant community-based transmission”;

**THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF GALLUP THAT:**

**SECTION 1: TITLE:**

This Ordinance shall be known as the “COVID-19 EMERGENCY FACE COVERING ORDINANCE.”

**SECTION 2: DEFINITIONS:**

- A. “Business” means any business or non-profit entity, or governmental entity subject to the jurisdiction of the City that operates from or maintains a facility that is accessible to any member of the public.
- B. “Employee” includes persons volunteering their services that do not receive a salary or other type of remuneration.
- C. “Face covering” means a cloth, bandana, mask, or other type of soft or permeable material without holes that covers the mouth and nose and fits snugly against the sides of the face. A mask that has a one way valve to allow easy exhaling is not considered a face covering.
- D. “Person” means a natural person two years of age or older as well as business entities such as partnerships, limited liability companies, and corporations.
- E. “Public place” means any place that is not a private residence or its surrounding property, apartment, or area of a business that is not generally accessible to the general public.

**SECTION 3: FACE COVERING REQUIREMENTS WHILE IN A PUBLIC PLACE**

- A. All persons shall wear a face covering that fits snugly against the sides of the face and in a manner that the nose and mouth are fully covered while in any public place. The parent, guardian, or custodian of a child under the age of eighteen is responsible for insuring that the child complies with the requirements of this section.
- B. The requirements of this section do not apply to:
  - 1. Persons traveling alone in or upon motor vehicles or with immediate family members unless it is necessary to roll down the window to interact with someone who is not an immediate family member.
  - 2. The owner, operator, manager, or employees of a business while within a facility owned, operated, or managed by the business.
  - 3. Persons engaged in outdoor recreation such as walking, hiking, running, or bicycling in a manner or location that does not place the person within six feet a another person that is not an immediate family member.

#### SECTION 4: FACE COVERING REQUIREMENTS FOR BUSINESSES

- A. The owner, manager, or operator of any business open to any member of the public shall require that any member of the public that enters any of its facilities wear a face covering that fits snugly against the sides of the face and in a manner that the nose and mouth are fully covered while within the facility. Any person entering the facility without wearing a face covering, or that removes his or her face covering while within the facility, shall be considered to have had his or her permission to enter the premises to be revoked or denied and shall be refused entry or removed from the premises.
- B. The owner manager, or operator of any business open to any member of the public shall post a notice, at or near the entrance to the facility, advising the public that anyone entering the facility must wear a face covering that fits snugly against the sides of the face and in a manner that the nose and mouth are fully covered while within the facility and that any person entering the facility without wearing a face covering, or that removes his or her face covering while within the facility, will be refused entry or removed from the premises. The notice shall be substantially in the form attached to this Ordinance as Appendix A.
- C. The owner manager or operator of any fast food establishment or restaurant that operates a drive-up window or curbside pickup service shall require that any member of the public purchasing items from the drive-up window or curbside pickup area wear a face covering that fits snugly against the sides of the face and in a manner that the nose and mouth are fully covered while interacting with any employee that comes within six feet of the customer. Any person that does not comply with the requirements of this section shall be denied service.
- D. Fast food establishments and restaurants that operate a drive-up window or curbside pickup service shall post a notice advising the public that anyone purchasing items from the drive-up window or curbside service pickup area must wear a face covering that fits snugly against the sides of the face and in a manner that the nose and mouth are fully covered while interacting with any employee that comes within six feet of the customer and that any person who does not comply with the notice will be denied service. The notice shall be substantially in the form attached to this Ordinance as Appendix B.

#### SECTION 5: PENALTIES AND ENFORCEMENT

- A. PENALTY: It is a misdemeanor for any person to violate any section of this ordinance and any person found guilty of violating any section of this ordinance shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500). Each day that a violation continues shall constitute a separate and distinct offense. The provisions of a criminal penalty in this section shall not be deemed a waiver of the rights of the City to institute an appropriate administrative or judicial proceeding to restrain, correct, or abate the violation.

B. ENFORCEMENT: The provisions of the ordinance shall be enforced by the issuance of a citation by any law enforcement officer, code enforcement officer, or fire marshal employed by the City. No person shall be arrested for violation of this ordinance.

SECTION 6: SEVERABILITY

If any section, sentence, clause or phrase of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

SECTION 7: EMERGENCY DECLARATION AND DURATION:

- A. The City Council finds that there is an urgent public need for this measure to become effective as soon as possible and therefore declares this Ordinance to be an emergency measure. This ordinance shall become effective five days after publication as required by Gallup City Code §1-6-10.
- B. This Ordinance shall remain effective until the Governor revokes the Declaration of a Health Emergency contained in Executive Order 2020 unless revoked sooner by the governing body of the City of Gallup.

PASSED, ADOPTED AND APPROVED this 12<sup>th</sup> day of May, 2020.

CITY OF GALLUP, NEW MEXICO

By: \_\_\_\_\_  
Louie Bonaguidi, Mayor

ATTEST:

\_\_\_\_\_  
Alfred Abeita II, City Clerk

Motion made by: \_\_\_\_\_

Seconded by: \_\_\_\_\_

Vote:  
Mayor Bonaguidi \_\_\_\_\_  
Councilor Garcia \_\_\_\_\_  
Councilor Schaaf \_\_\_\_\_  
Councilor Kumar \_\_\_\_\_  
Councilor Palochack \_\_\_\_\_