

Mask Review Committee
Meeting Minutes (**DRAFT**)
December 30, 2021

1. Call to Order

The meeting of the Mask Review Committee was called to order at 11:00 am.

2. Roll Call

Present: City Councilors Zandra Rice-Hawkins and Karen McNamara.

Also in Attendance: Mayor Bouley and Deputy City Solicitor Danielle Pacik.

3. Discussion

Attorney Pacik presented a preliminary proposed ordinance and explained that it was based primarily on the ordinance that was adopted by City Council on August 10, 2020 and January 11, 2021.

Attorney Pacik discussed that there were updates to the preamble, which included updates to address the current rate of community transmission and hospitalizations relative to COVID-19. Attorney Pacik explained that the transmission and hospitalization rates referenced in the draft ordinance were from December 27, 2021, but no significant changes had been reported. Councilor Rice Hawkins requested that the current transmission rates and hospitalization numbers be updated to reflect the most recent numbers.

Discussion ensued regarding some of the provisions of the draft ordinance being reviewed, and the type of businesses it would potentially regulate.

The distinction between “take-out food” and “restaurants” in the definition of “Business Establishments Open to the General Public” was discussed, and whether patrons picking up food from a restaurant should be required to wear a face covering.

The Committee discussed that Concord’s previous face covering ordinance was narrowly tailored to regulate retail establishments because the Governor had issued regulations governing most other businesses, but that the Governor’s orders relative to face coverings are no longer in effect.

A discussion ensued regarding Nashua’s ordinance which covers all businesses, including workers at private offices.

The Committee decided to use Nashua’s ordinance as a template, with certain modifications. The Committee made the following modifications to Nashua’s ordinance:

Paragraph 2 of Nashua's ordinance was modified to exclude the requirement to wear face coverings in outdoor areas. Discussion that the CDC's guidelines on wearing face coverings in outdoor areas have changed over the last year, and the CDC has not issued clear recommendations when face coverings are required outside.

Paragraph 2 of Nashua's ordinance was also modified to specify that only municipal government buildings would be covered by the ordinance. Attorney Pacik noted that the City does not have authority to regulate federal, state or county buildings. The Committee agreed that the school districts should be excluded from the proposed ordinance, and further noted that most have already enacted rules regarding face coverings.

Paragraph 5 of Nashua's ordinance was modified to only require individuals over the age of 5 to wear face coverings. Discussion that Concord's previous ordinance only required face coverings for children over the age of 5.

Paragraph 6 of Nashua's ordinance was modified to eliminate a requirement to show proof of a disability or other health-related reason. Discussion that requiring proof of a medical condition could create challenges for the police and businesses to enforce and could create issues relative to the Americans with Disabilities Act.

Paragraph 7 of Nashua's ordinance was modified to change the language on the signs required to be posted at each public entrance. Nashua's ordinance requires signs to state "Face Coverings Required." Discussion to modify the language to state "Face Coverings Required Per the City of Concord Ordinance."

Paragraph 7 of Nashua's ordinance which contained definitions for "business" and "owner" were eliminated. The Committee determined that Nashua's definitions of "business" and "owner" were unnecessary and should not be included. The Committee recommended using the definition of "face covering" contained in Concord's previous ordinance, and to include it in the proposed ordinance as paragraph 1.

The Committee added language in the proposed ordinance to specifically exempt religious institutions, non-municipal government buildings and schools. Discussion of whether the City Manager should be authorized to establish different rules for departments, including the Fire Department. Discussion that the Fire Department works twenty-four hours shifts and has sleeping quarters. The Committee recommended to authorize the City Manager to establish reasonable protocols for the Fire Department, but no other department.

The Committee also added language to clarify that any stricter laws or other requirements on face coverings required by the State of New Hampshire or the Governor's office would apply.

Discussion of penalties for non-compliance with the ordinance. Discussion that Concord Police Department received 53 calls regarding the prior face covering ordinance, and that

no citations were issued. It was noted that Portsmouth and Nashua similarly did not issue any citations for violations of their previous face covering ordinances. It was also noted that the State of New Hampshire refunded all fines to businesses that were issued for violations of the Governor's executive orders.

The Committee discussed that the primary purpose of the ordinance was for education.

Discussion of various options for penalties. Discussion that the prior ordinance treated fines similar to parking tickets, however the state statutes only authorize the doubling of fines for parking tickets and dog licenses. Discussion of whether only a verbal or written warning should be provided, as well as whether a person should be given a face covering in the event of non-compliance with the ordinance. The Committee agreed not to include a requirement for distributing masks in the ordinance, since it was uncertain whether the mask should be distributed by the business or police department.

Discussion of whether it would be appropriate to use the default provisions in the ordinance relative to penalties for violation of an ordinance. Attorney Pacik was asked about the default fines, and explained that Article 1-5-2 of the Code of Ordinances states that unless otherwise specified, the fine for violation of an ordinance is no less than \$50 and no more than \$1,000. The Committee agreed that such fines would be unreasonably high. The Committee recommended that the proposed fines for noncompliance should be as follows: First offense – a verbal or written warning; Second offense up to a \$25 fine; Third offense or subsequent offense up to a \$50 fine. The Committee discussed that the language “up to” would provide the prosecutors flexibility in fines in the event a citation is issued.

Discussion of the length of time that the ordinance should be in effect, and the need for the language be simple and easy to understand.

The Committee then worked to prepare a new draft ordinance to be proposed to the City Council based on their discussion during the public meeting. The Committee reviewed the revisions to the proposed ordinance that were needed.

The Committee further discussed the timeframe during which the ordinance should be in effect. Councilor Rice Hawkins recommended that the ordinance remain in effect under community transmission rates were “low.” Discussion that the CDC currently recommends masking while community transmission rates are “substantial” or “high,” and that the CDC had less restrictive rules for masking when transmission rates are “moderate” or “low.” Councilor Rice Hawkins noted that the CDC also has rules for masking based on the percentage of individuals vaccinated in a community. Councilor Rice Hawkins recommended that, due to the uncertainty surrounding Omicron, she would recommend masks until community transmission rates were “low.”

Councilor McNamara moved to vote to forward the proposed ordinance, as revised, to the City Council for a hearing on January 10, 2022, with the preamble to be updated with

county transmission rates and hospitalization rates on the date it is submitted to the agenda. The motion was duly seconded by Councilor Rice Hawkins. All voted in favor.

Attorney Pacik confirmed that she would forward the final draft of the proposed ordinance to the City Clerk, along with a report. The Committee requested that the report contain information from the CDC's website regarding how the community transmission rates are calculated to determine whether a county's rates are high, substantial, moderate or low.

The meeting of the Mask Review Committee was adjourned at 1:55 pm.

Attachments:

1. Preliminary Proposed Ordinance for Distribution and Discussion at December 30, 2021 Meeting
2. City of Nashua Ordinance
3. Committee's Proposed Ordinance approved at December 30, 2021 Meeting

ATTACHMENT 1

CITY OF CONCORD

In the year of our Lord two thousand and twenty-two

AN ORDINANCE amending the CODE OF ORDINANCES, Title I, General Code; Chapter 13 Public Health, Article 13-4, Vaccinations and Communicable Disease

The City of Concord ordains as follows:

SECTION I: Title I, General Code; Chapter 13 Public Health, Article 13-4 Vaccinations and Communicable Disease, by amending reserved Section 13-4-14 to be titled “Wearing of Face Coverings in the City of Concord – COVID-19” as follows:

13-4-14, Wearing of Face Coverings In The City of Concord – COVID-19

WHEREAS, as a result of the continued consequences of the Coronavirus Disease 2019 (COVID-19) pandemic, the Secretary of the United Department of Health and Human Services, pursuant to the authority vested under section 319 of the Public Health Service Act, renewed effective October 18, 2021 the determination that a public health emergency exists and has existed since January 27, 2020, nationwide; and

WHEREAS, according to the State of New Hampshire’s COVID-19 Response website, as of December 27, 2021, there is currently a “substantial” level of community transmission in Merrimack County, with new cases per 100,000 population over the last fourteen days at a rate of 1,206.8, and a test positivity rate over the last seven days of 13.6%; and

WHEREAS, according to the Centers for Disease Control and Prevention (“CDC”), as of December 27, 2021, there is currently a “high” level of community transmission in Merrimack County with a recommendation that everyone in the county should wear a mask in public, indoor settings, with new cases per 100,000 at 619 over the last seven days, with a test positivity rate of 15.17%;

WHEREAS, if COVID-19 continues to spread in New Hampshire, the number of persons requiring medical care may exceed locally available resources. According to the State of New Hampshire’s COVID-19 Response website, as of December 27, 2021, there are only 12.3% of total staffed hospital beds available statewide, and there are only 8.9% of staffed adult ICU beds available statewide.

- WHEREAS, Controlling outbreaks minimizes the risk to the public, maintains the health and safety of the people of New Hampshire, reduces the impact on hospital and ICU beds, and limits the spread of infection in our communities and within the healthcare delivery system; and
- WHEREAS, to reduce the spread of COVID-19, the CDC recommends that people wear face coverings in public settings when around people outside of their household, especially when other social distancing measures are difficult to maintain; and
- WHEREAS, New Hampshire's courts have recognized that the COVID-19 pandemic justifies the Governor's declaration of a State of Emergency and the restrictions placed on New Hampshire's citizens, businesses, and other organizations through the Emergency Orders. *See Binford, et. al. v. Sununu*, Merrimack Cty. Super. Ct., 217-2020-CV-00152 (March 25, 2020) (Kissinger, J.), at 7-9; *Devine v. Sununu*, Rockingham Cty. Super. Ct., 218-2020-CV-00602 (June 18, 2020) (Schulman, J.); *Cooper v. Sununu*, Hillsborough Cty. Super. Ct., Southern Dist., 2020-CV-00266 (July 13, 2020) (Colburn, J.), at 15; *Athens v. Sununu*, Cheshire Cty. Super. Ct., 213-2020-CV-00104 (July 14, 2020) (Ruoff, J.), at 6-7; and
- WHEREAS, COVID-19 is a global pandemic with an unprecedented public health emergency and with financial and economic devastation resulting therefrom, which require the State and its municipalities to continue to respond rapidly to ensure that necessary supplies, economic infrastructure, and other appropriate emergency responses are provided; and
- WHEREAS, the purpose of New Hampshire's Communicable Disease Statute codified under RSA chapter 141-C is to prevent, identify, control and when possible eradicate communicable diseases at the earliest possible time by application of appropriate public health measures and medical practices; and
- WHEREAS, RSA 47:17, XV authorizes New Hampshire municipalities to make any bylaws and regulations for the well-being of the city; and
- WHEREAS, in assessing the validity of an ordinance, courts "will not independently examine the factual basis for the ordinance." *Community Resources/or Justice, Inc. v. City of Manchester*, 154 N.H. 748, 757 (2012). Instead, the court "will inquire only as to whether the legislature could reasonably conceive to be true the facts upon which it is based." In addition, courts "will not second-guess the town's choice of means to accomplish its legitimate goals, so long as the means chosen is rationally related to those goals." *Dow v. Town of Effingham*, 148 N.H. 121, 124 (2002); and
- WHEREAS, the Concord City Council has determined that to continue to reduce the spread and infection of COVID-19, and to protect the interests of citizens who may need

to patronize businesses that are open to other members of the general public, obtain child care or to use public transportation, it is in the interest of the health and safety of all Concord citizens, residents, visitors, businesses, and the employees of our City and businesses, to wear face coverings while inside those business establishments that are open to the general public, public transportation and center-based child care centers.

NOW, THEREFORE, the Concord City Council, by the authority vested under the RSA chapter 47, and other applicable laws and orders, hereby enacts the following Ordinance.

1. As used herein “face covering” is defined as a covering made of cloth, fabric, or other soft or permeable material, without holes, that covers at least the nose, mouth, and surrounding areas of the lower face. A face covering may be factory made, homemade, or improvised from ordinary household material.
2. As used herein “Business Establishments Open to the General Public” includes but is not limited to buildings or structures or a portion thereof, for the display and sale of commodities such as department stores, drug stores, convenience markets, retail or wholesale stores, grocery stores, take-out food, bank lobbies, home improvement stores, where such commodities are available for immediate purchase and removal from the premises, and which is open to the general public without charge, and into which the public is invited for the purpose of conducting any business customarily provided to the public by the business. It does not include businesses in the service, restaurant or entertainment sector that charge an entrance fee, membership fee or provide personal care or other services such as cosmetology, barbering, medical facilities, movie and other theatres, health and fitness facilities and lodging. It also does not include religious institutions, governmental buildings or schools.
3. As used herein, “Public Transportation” includes all public conveyances while operating within the City of Concord including Concord Area Transit and taxicabs. Public Transportation does not include private shuttles, private ridesharing, school buses and/or other non-municipal government-operated transportation.
4. As used herein, “Center-Based Child Care Centers” includes all non-governmental day and after-school care centers and nursery schools which provide child care in a group setting. It does not include home-based family child care providers

5. Customers are required to wear a face covering at all times when inside a Business Establishment Open to the General Public. Employees are required to wear a face covering at all times when interacting with the general public. This ordinance shall not apply to the outdoor settings of those businesses.
6. Customers and employees are required to wear a face covering at all times while inside Public Transportation. Employees are not required to wear a face covering when there are no customers utilizing the Public Transportation.
7. Employees of Center-Based Child Care Centers are required to wear a face covering at all times when indoors and interacting with children and parents. When wearing a face covering is not feasible, employees shall strive to maintain the social distancing guidelines of six feet or less, as recommended by the CDC. For those employees working with disabled or hearing-impaired children, they shall be required to follow the CDC recommendations for face coverings.
8. Members of the public entering buildings open to the public which are not covered by this ordinance are highly encouraged to wear a face covering when they are unable to maintain the social distancing guidelines of six feet or less, as recommended by the CDC.
9. Face coverings shall not be required for children under 5 years of age. Face coverings are not recommended for children less than 2 years of age.
10. A face covering is not required to be worn by any person for whom wearing a face covering may pose a risk for health-related reasons, or for any person who has a disability or medical condition that makes wearing a face covering difficult. However, in these cases, special effort should be taken to maintain physical distance of at least six feet from other individuals when possible.
11. To the extent this Ordinance conflicts with stricter requirements set forth by the Governor's Office and/or the State of New Hampshire, those stricter requirements shall apply.
12. Penalties for non-compliance with this Ordinance are as follows: 1st offense - a verbal or written warning, 2nd offense up to a \$25 fine, 3rd or subsequent offense up to a \$50 fine.

SECTION II: This Ordinance shall take effect upon its passage and shall continue at all times until the level of community transmission rates in Merrimack County, New Hampshire for COVID-19 are deemed to be "low" as defined by the CDC using the indicators of new cases per 100,000 persons in the past seven days and/or percentage of positive NAATs tests during the past seven days, unless otherwise

repealed or extended. Information regarding the level of community transmission will be posted and updated weekly on the City website.

DRAFT

ATTACHMENT 2



ORDINANCE

RELATIVE TO REQUIRING FACE COVERINGS THROUGH JANUARY 31, 2022

CITY OF NASHUA

In the Year Two Thousand and Twenty One

Whereas, the Nashua Board of Health provided the following statement:

Relevant statistics as of December 14, 2021, comparing the change over the prior 2 weeks. Nationwide:

- Cases of Covid-19 are up 47%
- Hospitalizations are up 21%
- Deaths are up 40%

This is all despite just a 1% increase in testing. And New Hampshire, along with Rhode Island, leads the country in cases per capita.

Gene sequencing has showed that the Omicron variant has arrived in New Hampshire, and we have verified that Covid-19 tests do not cross-react with either the flu virus or the common cold, even in the face of the Omicron variant. A positive Covid-19 test means Covid-19. To date, 799, 000 Americans have died of Covid-19. Many more have been left with disabilities due to the ravages of serious Covid-19 infection. We have come to learn this virus has killed 1 of every 415 Americans.

We are setting records with the number of cases seen here in New Hampshire, Greater Nashua and the City of Nashua. There is an increasing number of cases in those who are unvaccinated. Our local hospitals are reporting 60%-80% of patients are unvaccinated and very ill. In addition, our hospitals are over capacity, having to stand up temporary ICU beds, and they are facing significant staffing issues, so much so, that Governor Sununu activated the National Guard to assist the hospitals in providing care.

Multiple scientific analysis and projections show that we are headed for a substantial increase in illness and hospitalizations due to a triple threat: the overwhelming presence of the highly contagious and deadly Delta variant, flu season and the even more contagious Omicron variant. This does not even take into account the uptick in non-Covid-19 illness due to pandemic delays in care and testing.

We know that vaccines are safe and remain very effective in preventing hospitalization and death. A significant portion of the 52.8 percent of people who were vaccinated were vaccinated more than six months ago, and immunity wanes. Children were only recently approved in the past couple of months. Getting a booster or completing the vaccine series for most children is not something that can reasonably be accomplished before the holidays.

Much has been written about the effectiveness of masks, and our understanding of their role in preventing serious illness in the wearer and in reducing spread in the community in general. The CDC has updated their assessment of mask effectiveness as recently as December 6th. Masks are unequivocally an important tool in fighting the spread of Covid-19. In fact, in one of the most controlled settings known, an outbreak of Covid-19 in the contained environment of an aircraft carrier, wearing a face covering was associated with a 70% reduction in the risk of infection with Covid-19. Masks have also been proven to be safe. Details can be found on the CDC website. <https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/masking-science-sars-cov2.html>

We recognize the trend in the uptick in cases during the holidays last year. We saw an increase in cases during this past Thanksgiving holiday on top of the already increasing number of cases due to the high transmissibility of the Delta variant. With the onset of the December holiday and recreational activities, individuals will engage in more indoor activities that will increase crowding in indoor public settings for gatherings, traveling, shopping and other venues. We want to increase the protection of everyone during and after those activities. This recommendation is made based on the substantial and high transmissions that are occurring in the community setting.

Thus, the Board of Health urges the Board of Alderman to implement a mask mandate and to do so without delay given the impending Holidays.

Now therefore, the City of Nashua ordains that the following Emergency Public Health Order adopted by the Nashua Board of Health is hereby approved:

1. Employees of all businesses shall wear a face covering over their mouth and nose when interacting with the public and whenever they are within six feet of a co-worker or a customer.
2. Members of the public entering any business, including without limitation any outdoor area where business of any sort is conducted, work site, or government building must wear a face covering over their nose and mouth.
3. Members of the public entering a restaurant for the purpose of picking up food for take-out or any other purpose must wear a face covering over their mouth and nose. Members of the public dining at a restaurant may remove face covering when actively eating and drinking.
4. Residents, visitors, and members of the public entering or present at a residential or commercial building complex of greater than two (2) units must wear a face covering over their nose and mouth while in common areas and communal spaces.

5. This order applies to all individuals over the age of 2, regardless of vaccination status.
6. A face covering is not required to be worn by any person if said person can show a medical professional has advised that wearing a face covering may pose a risk to said person for health related reasons. This exception to the face covering requirement for health reasons shall require a person to have in his or her immediate possession a written document executed by a medical doctor, registered nurse practitioner, or a physician's assistant authorized to prescribe medication which document certifies that the practitioner has warned the individual that he or she should not wear a face covering because it would pose a risk to his or her health.
7. All businesses open to the public, including restaurants, retail stores, service providers, and places of amusement and recreation, and residential and commercial buildings of greater than two (2) units shall post at each public entrance a notice stating "FACE COVERINGS REQUIRED."
8. Persons engaged in utilizing cardio, strength training, and other gymnasium equipment may remove the face covering during the actual use of such equipment provided a distance of six (6) feet from any other person is maintained.
9. Persons at places of amusement, including bingo halls, bowling alleys, charitable gaming facilities, and similar places where food and drink is served secondarily to the main activity may remove face covering while actually engaged in eating or drinking and not at other times.
10. Persons receiving personal care services including hair cutting and other hair treatment, facials, tattooing, piercing, and similar services, may remove face covering during any limited period during which the face covering actually interferes with the performing of the service.
11. For purposes of this ordinance and any other face covering requirements now in force or hereafter adopted the following words shall have the indicated meanings:

"Business" means any manager or supervisor on the premises when a violation occurs and any owner of the business.

"Face covering" means a covering made of cloth, fabric, or other soft or permeable material, without holes, that covers only the nose, mouth, and surrounding areas of the lower face. A face covering may be a 2-layer cloth mask or a surgical mask, but may not be a gaiter or scarf.

"Owner" means any one or more of the natural persons owning a business; in the case of a business owned by a partnership "owner" means the partnership and all general and limited partners; in the case of a business owned by a limited liability company "owner" means the company and all managers and members thereof; in the case of a business owned by a corporation "owner" means the corporation and all officers, and directors,

ORDINANCE

O-21-083

thereof; and in the case of a business owned by a corporation having fewer than ten (10) shareholders "owner" means all shareholders.

This ordinance shall be effective immediately and shall continue in effect until the end of the day of January 31, 2022. The Board of Health and the Board of Aldermen reserve the right to revisit this end date if the public's health remains threatened due to increased transmission.

The City Clerk is directed not to codify this ordinance in the Nashua Revised Ordinances but to designate it as **Covid-19 Emergency Measure No. _____** (City Clerk to assign appropriate number upon passage) and publish it and any subsequent emergency measures on the city website.

LEGISLATIVE YEAR 2021

ORDINANCE:

O-21-083

PURPOSE:

Relative to requiring face coverings through January 31, 2022

ENDORSERS:

**Alderman Thomas Lopez
Alderman Patricia Klee**

**COMMITTEE
ASSIGNMENT:**

FISCAL NOTE:

None.

ANALYSIS

This legislation approves the regulation adopted by the Board of Health requiring the wearing of face coverings by persons at various places, effective through January 31, 2022.

Approved as to form:

Office of Corporation Counsel

By: /s/ Steven A. Bolton

Date: December 17, 2021

ATTACHMENT 3

CITY OF CONCORD

In the year of our Lord two thousand and twenty-two

AN ORDINANCE amending the CODE OF ORDINANCES, Title I, General Code; Chapter 13
Public Health, Article 13-4, Vaccinations and Communicable Disease

The City of Concord ordains as follows:

SECTION I: Title I, General Code; Chapter 13 Public Health, Article 13-4 Vaccinations and Communicable Disease, by amending reserved Section 13-4-14 to be titled “Wearing of Face Coverings in the City of Concord – COVID-19” as follows:

13-4-14, Wearing of Face Coverings In The City of Concord – COVID-19

WHEREAS, as a result of the continued consequences of the Coronavirus Disease 2019 (COVID-19) pandemic, the Secretary of the United Department of Health and Human Services, pursuant to the authority vested under section 319 of the Public Health Service Act, renewed effective October 18, 2021 the determination that a public health emergency exists and has existed since January 27, 2020, nationwide; and

WHEREAS, according to the State of New Hampshire’s COVID-19 Response website, as of December 27, 2021, there is currently a “substantial” level of community transmission in Merrimack County, with new cases per 100,000 population over the last fourteen days at a rate of 1,206.8, and a test positivity rate over the last seven days of 13.6%; and

WHEREAS, according to the Centers for Disease Control and Prevention (“CDC”), as of December 27, 2021, there is currently a “high” level of community transmission in Merrimack County using the indicators of new cases per 100,000 persons in the past seven days and/or percentage of positive NAATs tests during the past seven days. The CDC currently recommends that everyone in the county should wear a mask in public, indoor settings, with new cases per 100,000 at 619 over the last seven days, with a test positivity rate of 15.17%;

WHEREAS, if COVID-19 continues to spread in New Hampshire, the number of persons requiring medical care may exceed locally available resources. According to the State of New Hampshire’s COVID-19 Response website, as of December 27,

2021, there are only 12.3% of total staffed hospital beds available statewide, and there are only 8.9% of staffed adult ICU beds available statewide.

WHEREAS, Controlling outbreaks minimizes the risk to the public, maintains the health and safety of the people of New Hampshire, reduces the impact on hospital and ICU beds, and limits the spread of infection in our communities and within the healthcare delivery system; and

WHEREAS, to reduce the spread of COVID-19, the CDC recommends that people wear face coverings in public settings when around people outside of their household, especially when other social/physical distancing measures by keeping a distance of six feet between yourself and others are difficult to maintain; and

WHEREAS, New Hampshire's courts have recognized that the COVID-19 pandemic justifies the Governor's declaration of a State of Emergency and the restrictions placed on New Hampshire's citizens, businesses, and other organizations through the Emergency Orders. *See Binford, et. al. v. Sununu*, Merrimack Cty. Super. Ct., 217-2020-CV-00152 (March 25, 2020) (Kissinger, J.), at 7-9; *Devine v. Sununu*, Rockingham Cty. Super. Ct., 218-2020-CV-00602 (June 18, 2020) (Schulman, J.); *Cooper v. Sununu*, Hillsborough Cty. Super. Ct., Southern Dist., 2020-CV-00266 (July 13, 2020) (Colburn, J.), at 15; *Athens v. Sununu*, Cheshire Cty. Super. Ct., 213-2020-CV-00104 (July 14, 2020) (Ruoff, J.), at 6-7; and

WHEREAS, COVID-19 is a global pandemic with an unprecedented public health emergency and with financial and economic devastation resulting therefrom, which require the State and its municipalities to continue to respond rapidly to ensure that necessary supplies, economic infrastructure, and other appropriate emergency responses are provided; and

WHEREAS, the purpose of New Hampshire's Communicable Disease Statute codified under RSA chapter 141-C is to prevent, identify, control and when possible eradicate communicable diseases at the earliest possible time by application of appropriate public health measures and medical practices; and

WHEREAS, RSA 47:17, XV authorizes New Hampshire municipalities to make any bylaws and regulations for the well-being of the city; and

WHEREAS, in assessing the validity of an ordinance, courts "will not independently examine the factual basis for the ordinance." *Community Resources/or Justice, Inc. v. City of Manchester*, 154 N.H. 748, 757 (2012). Instead, the court "will inquire only as to whether the legislature could reasonably conceive to be true the facts upon which it is based." In addition, courts "will not second-guess the town's choice of

means to accomplish its legitimate goals, so long as the means chosen is rationally related to those goals.” *Dow v. Town of Effingham*, 148 N.H. 121, 124 (2002); and

WHEREAS, the Concord City Council has determined that to continue to reduce the spread and infection of COVID-19, and to protect the interests of citizens who may need to patronize businesses that are open to other members of the general public, obtain child care or to use public transportation, it is in the interest of the health and safety of all Concord citizens, residents, visitors, businesses, and the employees of our City and businesses, to wear face coverings while inside businesses.

NOW, THEREFORE, the Concord City Council, by the authority vested under the RSA chapter 47, and other applicable laws and orders, hereby enacts the following Ordinance.

1. As used herein “face covering” is defined as a covering made of cloth, fabric, or other soft or permeable material, without holes, that covers at least the nose, mouth, and surrounding areas of the lower face. A face covering may be factory made, homemade, or improvised from ordinary household material.
2. Employees of all businesses shall wear a face covering over their mouth and nose when interacting with the public and whenever they are within six feet of a co-worker or a customer.
3. Members of the public entering any business, excluding any outdoor area, where business is conducted, work site, or municipal government building must wear a face covering over their nose and mouth.
4. Members of the public entering a restaurant for the purpose of picking up food for take-out or any other purpose must wear a face covering over their mouth and nose. Members of the public dining at a restaurant may remove face covering when actively eating and drinking.
5. Residents, visitors, and members of the public entering or present at a residential or commercial building complex of greater than two (2) units must wear a face covering over their nose and mouth while in common areas and communal spaces.
6. This order applies to all individuals over the age of 5, regardless of vaccination status.
7. A face covering is not required to be worn by any person for whom wearing a face covering may pose a risk for health-related reasons, or for any person who

has a disability or medical condition that makes wearing a face covering difficult. However, in these cases, special effort should be taken to maintain physical distance of at least six feet from other individuals when possible.

8. All businesses open to the public, including restaurants, retail stores, service providers, and places of amusement and recreation, and residential and commercial buildings of greater than two (2) units shall post at each public entrance a notice stating “FACE COVERINGS REQUIRED PER THE CITY OF CONCORD ORDINANCE.”
9. Persons engaged in utilizing cardio, strength training, and other gymnasium equipment may remove the face covering during the actual use of such equipment provided a distance of six (6) feet from any other person is maintained.
10. Persons at places of amusement, including bingo halls, bowling alleys, charitable gaming facilities, and similar places where food and drink is served secondarily to the main activity may remove face covering while actually engaged in eating or drinking and not at other times.
11. Persons receiving personal care services including hair cutting and other hair treatment, facials, tattooing, piercing, and similar services, may remove face covering during any limited period during which the face covering actually interferes with the performing of the service.
12. This ordinance does not include religious institutions, non-municipal governmental buildings, or schools. The City Manager is authorized to establish reasonable protocols with the Fire Department relative to face coverings.
13. To the extent this Ordinance conflicts with stricter requirements set forth by the Governor’s Office and/or the State of New Hampshire, those stricter requirements shall apply.
14. Penalties for non-compliance with this Ordinance are as follows: 1st offense – a verbal or written warning, 2nd offense up to a \$25 fine, 3rd or subsequent offense up to a \$50 fine.

SECTION II: This Ordinance shall take effect upon its passage and shall continue at all times until the level of community transmission rates in Merrimack County, New Hampshire for COVID-19 are deemed to be “low” as defined by the CDC, unless

otherwise repealed or extended. Information regarding the level of community transmission will be posted and updated weekly on the City website.

DRAFT