

# **DECLARATION OF EMERGENCY REGULATIONS No. 7**

**(COVID-19 State of Emergency – July 1, 2020)**

WHEREAS, Novel Coronavirus Disease 2019 (COVID-19) is a severe acute respiratory illness that can spread among humans through respiratory transmission and other potential methods, and presents symptoms similar to those of influenza;

WHEREAS, in December of 2019, a new and substantial outbreak of COVID-19 emerged in Wuhan, China, and has since spread rapidly to 150 countries and territories throughout the World, including the United States, and more specifically Lee County;

WHEREAS, on March 11, 2020, the World Health Organization (WHO) declared COVID-19 a pandemic;

WHEREAS, the Centers for Disease Control and Prevention (CDC) has predicted the widespread transmission of COVID-19 in the United States;

WHEREAS, no vaccine or drug is currently available to cure or combat COVID-19;

WHEREAS, the CDC has issued guidelines for "community mitigation strategies" to limit the spread of COVID-19, including recommendations for social distancing, which has proven to be an effective method for containing COVID-19;

WHEREAS, President Trump issued a Proclamation Declaring a National Emergency Concerning the Novel Coronavirus Disease - COVID-19 Outbreak;

WHEREAS, COVID-19 threatens the Town of Fort Myers Beach because of the ability of the virus to spread rapidly, and COVID-19 thereby constitutes a clear and present threat to the health, safety, and welfare of the residents and visitors of the Town of Fort Myers Beach;

WHEREAS, according to information from the Center for Disease Control and Prevention, Public Health Professionals, and the 2010 Federal Census the Town of Fort Myers Beach is an "at-risk" community for severe or critical reactions to COVID-19 infections;

WHEREAS, on March 1, 2020, the Governor of Florida issued Executive Order Number 20-51, directing the State Health Officer and Surgeon General to declare a Public Health Emergency due to the discovery of COVID-19 in Florida; and

WHEREAS, on March 9, 2020, the Governor of Florida issued Executive Order Number 20-52, declaring a State of Emergency for the state of Florida related to COVID-19;

WHEREAS, due to the intensity of COVID-19 in other hot spots in the nation, the Governor of Florida has imposed additional screening measures for travelers departing from hot spots, see, Executive Orders 2020-80 and 2020-82;

WHEREAS, the Governor of Florida has issued Executive Order 2020-83, directing Florida's Surgeon General and State Health Officer to issue a public health advisory to all persons over 65 years of age and to persons with certain underlying conditions that place them at high risk of serious illness from Covid-19 to urge them to stay home and take measures to limit their exposure to Covid-19;

WHEREAS, conditions presented by the threat of COVID-19 continue to pose a threat to the public health that requires dynamic emergency response, including the maintenance of existing orders, as well as the imposition of additional directives and orders as conditions require;

WHEREAS, the Centers for Disease Control (CDC) advises that COVID-19 spreads mainly from person to person through respiratory droplets produced when an infected person coughs, sneezes, or talks; and these droplets can land in the mouths or noses of people who are nearby or possibly be inhaled into the lungs; and studies and evidence on infection control report that these droplets usually travel around 6 feet (about two arms lengths);

WHEREAS, the CDC advises that a significant portion of individuals with coronavirus lack symptoms ("asymptomatic") and that even those who eventually develop symptoms ("pre-symptomatic") can transmit the virus to others before showing symptoms. This means that the virus can spread between people interacting in close proximity — for example, speaking, coughing, or sneezing — even if those people are not exhibiting symptoms;

WHEREAS, the CDC recommends wearing cloth face coverings in public settings where other social distancing measures are difficult to maintain in order to slow the spread of the virus and help people who may have the virus and do not know it from transmitting it to others;

WHEREAS, the CDC does not recommend wearing cloth face covering for children under the age of 2, or anyone who has trouble breathing, or is unconscious, incapacitated or otherwise unable to remove the mask without assistance;

WHEREAS, the CDC recommends only simple cloth face coverings for the general population and not surgical masks or N-95 respirators because these are critical supplies that must continue to be reserved for healthcare workers and other medical first responders;

WHEREAS, cloth face coverings are relatively inexpensive and readily available as the CDC states they can be made from household items and provides online guidance for making "do-it-yourself" coverings for people that cannot or do not want to buy one from the increasing sources producing and selling coverings;

WHEREAS, an increasing number of state and local governments throughout the United States are requiring facial coverings to be worn in public;

WHEREAS, the State of Florida has not preempted local governments from regulating in the field of minimum health requirements with respect to COVID-19;

WHEREAS, 28 C.F.R. 36.208, the implementing regulations for the Americans with Disabilities Act states that the ADA “does not require a public accommodation to permit an individual to participate in or benefit from the goods, services, facilities, privileges, advantages and accommodations of that public accommodation when that individual poses a direct threat to the health or safety of others;

WHEREAS, the Third District Court of Appeal has defined the term business establishment for purposes of tort liability to mean, “a location where business is conducted, goods are made or stored or processed or where services are rendered.” *Publix Supermarkets, Inc. v. Santos*, 118 So.3d 317 (Fla. 3d DCA 2013);

WHEREAS, the Florida Legislature has defined the term “transient public lodging establishment” to mean “any unit, group of units, swelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for a period of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.” See, § 509.013(4)(a)1, *Fla. Stat.*;

WHEREAS, on June 25, 2020, the Florida Supreme Court concluded that a pandemic is a “natural emergency” within the meaning of § 252.34(8), *Fla. Stat.*, and thus the government may enact emergency orders pursuant to the State Emergency Management Act, see, *Abramson v. DeSantis*, SC20-646;

WHEREAS, § 252.46(2), *Fla. Stat.* authorizes local governments to issue orders for emergency management purposes;

WHEREAS, in accordance with §§ 252.38 and 252.46, *Fla. Stat.*, and Sections 12-19 through 12-25 of the Code of Ordinances of the Town of Fort Myers Beach, Florida, the Town Council of the Town of Fort Myers Beach adopted Resolution 20-13, declaring a state of emergency regarding COVID-19, and authorizing the **“taking [of] whatever prudent action is necessary to ensure the health, safety, and welfare of the community”**;

WHEREAS, this Emergency Declaration is adopted pursuant to § 252.46, *Fla. Stat.*

**NOW, THEREFORE IT IS ORDERED:**

1. Definitions. For purposes of this Emergency Declaration, the following terms are defined as follows:

(a) *Face Covering*. A “face covering” is a material that covers the nose

and mouth. It can be secured to the head with ties or straps or simply wrapped around the lower face. It can be made of a variety of materials, such as cotton, silk, or linen. A cloth face covering may be factory-made or sewn by hand, or can be improvised from household items.

(b) *Business establishment.* A “business establishment” means any location where any business is conducted, goods are made, stored, or processed or where services are rendered. The term “business establishment” also include locations where non-profit, governmental, and quasigovernmental entities facilitate public interactions and conduct business. The definition shall include the entire premises of the business establishment, whether owned or leased, regardless of whether indoors or outdoors.

(c) *Lodging establishment.* A “lodging establishment” shall have the same meaning as the term “transient public lodging establishment” has in § 509.013(4)(a)1. *Fla. Stat.* (2019). A lodging establishment is a specific type of business establishment.

(d) *Operator.* An “operator” shall mean any individual or entity that owns a business or controls the operation of the business, even if only for a period of time, regardless of the formal title or role held by that individual.

(e) *Social Distancing.* “Social distancing” shall mean keeping space between yourself and other persons by staying a minimum of six (6) feet away from another person.

## 2. Mandatory Face Covering Requirements

(a) Every person over the age of six (6) who is away from his or her residence shall wear a face covering when not able to engage in social distancing.

(b) Every person over the age of six (6) who is away from his or her residence shall have access to a face covering capable of immediate use.

(c) The operator and employees of a business or lodging establishment shall ensure that every individual in that establishment complies with this section.

(d) Every person over the age of six (6) - whether an owner, worker, patron, or otherwise - of a business or place of public accommodation shall wear a face covering while indoors within that business or place of public accommodation.

3. Exceptions. Paragraphs (a) (c) and (d) of Section 2 of this Emergency Declaration shall not apply to:
- (a) Restaurant and bar customers or patrons while dining and/or consuming beverages while seated.
  - (b) A gym patron engaged in a workout or class when able to engage in social distancing with the next closest person.
  - (c) Barbershop or beauty salon customers or patrons when wearing a face covering would reasonably interfere with receiving services.
  - (d) A lodging establishment guest when inside of the lodging unit including but not limited to a hotel room, motel room, vacation rental unit, timeshare unit, or similar unit.
  - (e) Any person who is under six (6) years of age, or is unconscious, incapacitated or otherwise unable to remove the mask without assistance.
  - (f) Public safety, fire, law enforcement, and other life safety personnel, as their personal protective equipment requirements will be governed by their respective agencies.
  - (g) While outdoors in any public area anywhere with appropriate social distancing of six or more feet between individuals who do not reside together, including but without limitation, at the beach, on the shared use path, or public parks and facilities.
  - (h) Any person who has one or more medical conditions or disabilities that prevent wearing a mask or otherwise would cause impairment due to an existing health condition.
  - (i) Any person working in an area of a business or other place of public accommodation that is not open to customers, patrons, or the public, provided that six feet of distance separation exists between any such person(s). **This exception does not apply to any person in the kitchen or other food and beverage preparation area of a restaurant or food establishment.**
  - (j) Any person worshiping in a church, synagogue or other place of religious worship.
4. ADA Accommodation. When a customer of a business establishment

asserts that he or she has a disability that prevents the individual from wearing a mask, the owner, manager, or employee of the business establishment may exclude the individual, even if they have a disability, as they pose a direct threat to the health and safety of employees and other customers, even if asymptomatic, and shall accommodate the disabled individual in a manner that does not fundamentally alter the operations of the business establishment nor jeopardize the health of that business's employees and other customers, such as providing curb service or delivery or other reasonable accommodation.

5. Enforcement. In accordance with applicable state law, Sections 1-12 and 12-25 of the Code of Ordinances of the Town of Fort Myers Beach and Article V of Chapter 2 of the Land Development Code of Fort Myers Beach, any violation of this Emergency Declaration by an individual is subject to a \$50 fine per occurrence. Any violation of this Emergency Declaration by a lodging establishment or operator is subject to a \$500 fine per occurrence. Each violation shall constitute a separate occurrence.
  
5. Severability. Any provision(s) within this Emergency Declaration that conflict(s) with any State or Federal law or constitution provision, or conflict(s) with or are superseded by a current or subsequently-issued Executive Order of the Governor or the President of the United States, shall be deemed inapplicable and deemed to be severed from this Emergency Declaration, with the remainder of the Emergency Declaration remaining intact and in full force and effect.
  
6. Effective Date. This Emergency Declaration is effective 12:01 a.m., July 2, 2020 and shall stay in effect until rescinded by the Town Council.

Raymond P. Murphy, Mayor	aye
Rexann Hosafros, Vice Mayor	aye
Dan Allers, Council Member	nay
Jim Atterholt, Council Member	nay
Bill Veach, Council Member	aye

TOWN OF FORT MYERS BEACH

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Raymond P. Murphy, Mayor

ATTEST:

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Michelle D. Mayher, Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE  
USE AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:

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John R. Herin, Jr., Town Attorney

This Emergency Declaration was filed in the Office of the Town Clerk on this 2<sup>nd</sup> day of  
July 2020 [see, §252.46(2), Fla. Stat.].

Michelle D. Mayher, Town Clerk