

EMERGENCY ORDINANCE NO. 20-__

AN EMERGENCY ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA, CONFIRMING THE GOVERNOR'S DECLARED STATE OF EMERGENCY; ADOPTING THE GOVERNOR'S PLAN FOR PHASED REOPENING OF THE CITY AS SET FORTH IN EXECUTIVE ORDER NO. 20-112; ESTABLISHING RULES SUPPLEMENTARY TO EXECUTIVE ORDER NO. 20-112; AUTHORIZING THE CITY MANAGER TO ISSUE EMERGENCY ORDERS AND RULES PURSUANT TO §§ 252.38 AND 252.46, FLORIDA STATUTES; AND PROVIDING FOR NON-CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS a respiratory illness due to a novel coronavirus (a disease now known as COVID-19), was first identified in Wuhan City, Hubei Province, China, and has spread outside of China, impacting many countries, including the United States; and

WHEREAS on January 23, 2020, the CDC activated its Emergency Response System to provide ongoing support for the response to COVID- 19 across the country; and

WHEREAS on March 1, 2020, Governor Ron DeSantis of the State of Florida issued Executive Order No. 20-51 directing the Florida Department of Health to issue a Public Health Emergency, and the State Surgeon General and State Health Officer declared a Public Health Emergency exists in the State of Florida as a result of COVID-19; and

WHEREAS on March 9, 2020, Governor Ron DeSantis of the State of Florida issued Executive Order No. 20-52 declaring a state of emergency within the State of Florida in response to the COVID-19 Public Health Emergency; and

WHEREAS on March 12, 2020, the City of Winter Garden enacted Emergency Ordinance No. 20-22 declaring a local State of Emergency and authorizing the City Manager to undertake certain emergency measures in response to the threat posed by COVID-19; and

WHEREAS, at the beginning of April, 2020, the Governor issued Executive Orders 20-91 and 20-92 directing all persons in Florida to limit their movements and personal interactions outside of their home only to those necessary to obtain or provide essential services or conduct essential activities as defined therein; and

WHEREAS, the Governor's administration has implemented a data-driven strategy devoted to high-volume testing and aggressive contact tracing, as well as strict screening protocols in long-term care facilities to protect vulnerable residents; and

WHEREAS, data collected by the Florida Department of Health indicates that the State of Florida has achieved several critical benchmarks in flattening the curve, including a downward trajectory of hospital visits for influenza-like illness and COVID-19-like syndromic cases, a decrease in positive tests results, and a significant increase in hospital capacity since March 1, 2020; and

WHEREAS, during the week of April 20, 2020, the Governor convened a Task Force to Re-Open Florida to evaluate how to safely and strategically reopen the state, including local jurisdictions therein; and

WHEREAS, the path to reopening Florida and the City of Winter Garden must promote business operation and economic recovery while maintaining focus on core safety principles; and

WHEREAS, in observance of the foregoing, the Governor issued Executive Order No. 20-112, which establishes rules and guidelines for a phased reopening of certain businesses within the state; and

WHEREAS City is granted the authority under § 2(b), Art. VIII of the Florida Constitution, to exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, this Emergency Ordinance is authorized by Section 21 of the City of Winter Garden Charter, § 166.041(3)(b), Florida Statutes, and § 252.38, Florida Statutes, and other applicable provisions of law; and

WHEREAS, §§ 252.38 and 252.46 expressly authorize the City to make, amend, and rescind such orders and rules as area necessary for emergency management purposes and to supplement the carrying out of the provisions of §§ 252.31-252.90, and such orders and rules have the full force and effect of law after adoption; and

WHEREAS, the Office of the Governor issued a FAQ in connection with Executive Order No. 20-91, published on April 3, 2020, stating that the City is allowed to adopt requirements directly on businesses, operations or venues, including buildings, beaches, and parks, that may be stricter than Executive Order No. 20-91; and

WHEREAS, the Office of the Governor issued another statement via its FAQ for Executive Order No. 20-112, published on April 29, 2020, that "[t]he Governor's Executive Orders do not contain a preemption on local rules where those rules restrict or close businesses or buildings;" and

WHEREAS, this Ordinance is intended to implement a phased and prudent reopening of businesses and economic activity within the City in accordance with the provisions of the Governor's Executive Ordinance No. 20-112 while providing for supplemental and complementary COVID-19 mitigation rules; and

WHEREAS, the City finds that this Ordinance is in the best interest of the public health, safety, and welfare of the citizens of Winter Garden.

NOW, THEREFORE, BE IT ENACTED BY THE CITY OF WINTER GARDEN, FLORIDA:

SECTION 1. Recitals. The above recitals are true and accurate and are incorporated herein.

SECTION 2. Affirmation of Emergency. The City Commission affirms, due to those reasons enumerated herein, that a statewide State of Emergency affecting the state in general and the City in particular has been declared by the Governor of the State of Florida and continues to exist. The City Commission therefore affirms the Governor's Declaration of a State of Emergency.

SECTION 3. Phased Reopening. The City Commission hereby adopts the Governor's plan for a phased reopening pursuant to Executive Order No. 20-112, and such order is hereby adopted as part of this Ordinance as set forth in **Exhibit A**, attached hereto and incorporated herein. Such order has the force and effect of law within the City pursuant to § 252.36(1)(b), Florida Statutes, and is hereby expressly adopted by the City pursuant to the City's home rule powers until such order is superseded, rescinded, or modified by the Governor.

SECTION 4. Supplemental Regulations. In addition to the Phased Reopening rules imposed by Executive Order No. 20-112, the City adopts the following additional restrictions on local businesses as authorized by the Governor. Such restrictions are intended to supplement and complement the Governor's Executive Orders and may not be interpreted in any manner that would conflict with such orders:

- a. *Occupancy.* Retail and restaurant businesses may not exceed 25% building occupancy as set forth in Executive Order No. 20-112. For the purposes of this Ordinance, "building occupancy" is a facility's occupancy rating as determined pursuant to the Florida Building Code. In calculating whether a retail or restaurant business's capacity remains within the 25% building occupancy limit, employees and contractors of such businesses are to be excluded.
- b. *Outdoor Dining.* Social distancing must be maintained for outdoor dining areas. No more than 10 individuals may be seated together, and all tables must be spaced at least 6 feet from one another. Persons in outdoor dining areas are required to be seated with their groups and not permitted to compromise social

distancing measures by standing about or loitering from table to table in such areas.

- c. *Restaurant Workers.* All persons employed or otherwise contracted or hired to work at a restaurant business and are either onsite at the restaurant or engaged in delivery service (“Restaurant Workers”) must wear facial coverings designed or otherwise worn so that they cover the nose and mouth in accordance with current Centers for Disease Control and Prevention (“CDC”) guidelines. Restaurants businesses open to the public, regardless of whether open for delivery, takeout, or dine-in service, are required to comply with the screening and prohibition requirements set forth in Section 3.C. of Executive Order No. 20-68 with regard to their respective Restaurant Workers.
- d. *Bar and Counter Seating.* Restaurants and other food service establishments open to the public shall ensure that customers and other invitees are seated only at tables and booths and shall prohibit customers and other invitees from being seated at bars or counters. For row seating in waiting areas, Restaurants and other food service establishments must ensure that groups number no more than 10 and are seated at least 6 feet apart.
- e. *Generally.* All owners, managers, supervisors, and directors of retail and restaurant and food service establishments are responsible for regularly reviewing applicable Executive Orders of the Governor pertaining to the mitigation of COVID-19 and ensuring that their respective businesses are in compliance therewith and meeting all applicable prescribed guidelines contained therein.

SECTION 5. **Emergency Powers.** The City has the right to exercise any of the powers provided to local governments pursuant to §§ 252.38 and 252.46, Florida Statutes, and the City Manager is authorized and empowered to make, amend, and rescind such orders and rules as are necessary for emergency management purposes and to supplement the carrying out of the provisions of §§ 252.31-252.90, Florida Statutes, but which are not inconsistent with any orders or rules adopted by the division or by any state agency exercising a power expressly and duly delegated to it by order of the Governor or the division. For the purpose of carrying out COVID-19 mitigation, the City Manager is encouraged to seek assistance from any and all applicable federal, state, and local agencies that may be capable of providing emergency services, compensation, or reimbursement to the City. The City Commission grants the City Manager the authority to issue executive orders making changes to the COVID-19 mitigation restrictions contained in this ordinance based upon any subsequent executive orders or emergency proclamations issued by the Governor’s office or other local jurisdictions, which orders are subject to ratification by the City Commission at its next scheduled public meeting.

SECTION 6. **Enforcement.** If the City determines that a business is not following any of the requirements herein, including any requirements pertaining to

COVID-19 mitigation as may be or may have been issued by the Governor via executive order or other proclamation, the City has the authority to order the business closed. For the purposes of this section, closure mandates may be issued by the City Manager, the City's Code Enforcement office, or law enforcement having jurisdiction within the City. Nothing herein may be read or construed to preclude the City from enforcing violations of this Ordinance pursuant to § 242.47, Florida Statutes, or any applicable municipal code enforcement provisions.

SECTION 7. Ratification. The City Commission hereby ratifies, affirms, and confirms any and all past emergency actions and other activities undertaken by the City since the City Commission's adoption of Ordinance 20-22 on March 12, 2020. Such actions and other activities are deemed to have been undertaken pursuant to the home rule authority of the City and this ordinance and are deemed lawful hereunder.

SECTION 8. Severability. If any portion of this Ordinance is finally determined by a court of competent jurisdiction to be invalid, unconstitutional, unenforceable or void, the balance of the Ordinance shall continue in full force and effect.

SECTION 9. Non-Codification. Given the temporary nature and effect of this Ordinance, it is the intent of the City Commission that this Ordinance will not be codified.

SECTION 10. Effective Date. This Ordinance shall become effective immediately. Pursuant to § 21 of the City Charter, this Ordinance shall expire as provided by applicable law unless otherwise extended by the City Commission.

READ AND ADOPTED this ____th day of May, 2020

CITY OF WINTER GARDEN, FLORIDA

ATTEST:

John Rees, Mayor/Commissioner

Angela Grimmage, City Clerk