

**ORDINANCE NO. 12  
(SERIES OF 2020)**

**AN EMERGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO, ADOPTING A PUBLIC HEALTH ORDER OF THE CITY OF ASPEN, COLORADO FOR THE PROMOTION OF HEALTH AND SUPPRESSION OF DISEASE AMENDING ORDINANCE #11, SERIES OF 2020 TO, AMONG OTHER AMENDMENTS, CREATE A MANDATORY FACE COVERING ZONE.**

WHEREAS, the City of Aspen (the “City”) is a legally and regularly created, established, organized and existing municipal corporation under the provisions of Article XX of the Constitution of the State of Colorado and the home rule charter of the City (the “Charter”); and

WHEREAS, Section 4.11 of the Charter authorizes the City Council to enact emergency ordinances for the preservation of public property, health, peace, or safety upon the unanimous vote of City Council members present or upon a vote of four (4) Council members, whichever is less; and

WHEREAS, the City of Aspen declared a local disaster emergency on March 12, 2020 pertaining to the occurrence or imminent threat of widespread or severe damage, injury or loss of life or property resulting from COVID-19; and

WHEREAS, the City of Aspen commenced and continues to support crisis response efforts, through both personal and other resources; and

WHEREAS, pursuant to State and Local Public Health Orders, businesses have been allowed to open to the public under strict guidelines for the health and safety of the public; and

WHEREAS, the Centers for Disease Control and Prevention recommends wearing face coverings in public settings to prevent the spread of COVID-19; and

WHEREAS, the City of Aspen City Council previously, via Resolution 40 (Series of 2020), amended and renewed via Resolution No. 43 (Series of 2020), and renewed again via Resolution No. 54 (Series of 2020), issued a public health order requiring individuals to wear face coverings in public places, but that many members of the public are not adhering to the requirement of wearing a face covering and businesses have been allowing individuals to enter without face coverings; and

WHEREAS, Ordinance #11 (Series of 2020), adopted the mandatory face covering requirements of Resolution #40 (Series of 2020), approved a mandatory closing time for all businesses with the City of Aspen and amended Title 5 and Title 14 of the City of Aspen Municipal Code, regarding the business and liquor licenses; and

WHEREAS, the City Council proposes to amend the mandatory face covering provisions of Ordinance #11 (Series of 2020) adopting a zone in which face covering shall be mandated in all

public outdoor spaces. It is the intent of this amendment to require all persons within the Mandatory Face Covering Zone to wear face coverings at all times in indoor public places and outdoor public places, as defined herein, unless one of the exceptions is met; and

WHEREAS, failure of individuals and businesses to comply with public health guidelines can jeopardize the health of the community as a whole and could require the reinstatement of stay at home orders and the re-closing of all businesses leading to devastating economic impacts; and

WHEREAS, the City Council has determined that it is necessary to declare an emergency for the preservation of public health, peace, and safety to amend provisions within the City of Aspen Municipal Code that would allow the immediate suspension of a license to conduct business within the City of Aspen if a business has been deemed to have violated any duly issued order, regulation or law of the Federal, State or Local government; and

WHEREAS, the City Council finds that it is appropriate and in the interests of the public health, safety, and welfare and would further protect property and civil order, for the City Council to adopt an Emergency Ordinance and Public Health Order requiring all businesses within the City of Aspen to be closed at a certain, specific time each night, requiring face coverings in public places in the City of Aspen, including mandatory face coverings in certain areas of town, and imposing penalties on businesses who permit individuals to enter without face coverings.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ASPEN CITY THAT:

**Section 1.**

Ordinance #11, Series of 2020 is hereby amended as follows:

Section 2, is hereby deleted and replaced with the following:

The City of Aspen City Council hereby adopts the following public health order requiring face coverings in public places within the City of Aspen:

**Section 2.1.** Definitions.

- a. Face Covering shall mean a uniform piece of material that securely covers a person’s nose and mouth and remains affixed in place without the use of one’s hands.
- b. Mandatory Face Covering Zone is any indoor or outdoor public place located within the boundaries of that zone depicted on the attached Exhibit “A”, which is incorporated herein by this reference.
- c. Outdoor Public Place means an outdoor place to which the public or a substantial

number of the public has access, including, but not limited to, any street, sidewalk, public alley, public parking lot, park, playground, and the common areas of any public and private buildings and facilities.

- d. Indoor Public Place means an indoor place to which the public or a substantial number of the public has access, including, but not limited to, any common areas of any public and private buildings and facilities.

Section 2.2. Face Coverings required.

All persons shall wear Face Coverings:

- a. when entering and while inside of a place of business or mode of transportation open to the public, and
- b. while in any outdoor or indoor public place located within the Mandatory Face Covering Zone; and
- c. outside of the Mandatory Face Covering Zone, in indoor or outdoor public places where persons are unable to maintain safe social distancing (six or more feet of separation regardless of duration).

Section 2.3. Exceptions.

Nothing herein shall require the wearing of face coverings by the following persons:

- a. Persons under the age of two years; and
- b. Persons for whom a face covering would cause impairment due to an existing health condition.
- c. Persons who, while seated, are eating or drinking.
- d. Persons who have entered a restaurant or bar open pursuant to Pitkin County or State regulations may remove face covering as allowed by such regulations.
- e. Persons working in a professional office who do not have any face-to-face interactions with the public or co-workers as allowed by Pitkin County or State of Colorado regulations.
- f. Performers as long as twenty-five (25) feet distance from spectators is maintained.
- g. Persons in an automobile, alone or with members or their own household.

Section 2.4: Requirements for Businesses Open to the Public.

- a. No business open to the public shall permit any individual not wearing a face covering to enter or remain in the business unless that individual is excepted from wearing a face covering pursuant to section 2.3, above. Businesses that choose to offer masks to customers prior to entering must provide new, clean or otherwise previously unworn masks.
  
- b. Restaurants may allow individuals to remove their face coverings once the individual is seated at a table for dining. The individual must wear the face covering any time he or she is not seated at their table.
  
- c. Any business open to the public that permits an individual to enter or remain in the business without a required face covering is subject to the suspension or revocation of its business or liquor license pursuant to Sec. 5.04.065 and Sec. 14.08.140 of the City of Aspen Municipal Code as well as the penalty provisions contained in section 2.8 of this public health order.

Section 2.5: General Information for all Persons.

Pursuant to federal Centers for Disease Control guidance, the public is strongly encouraged to wear cloth Face Coverings that:

- a. fit snugly but comfortably against the side of the face;
- b. are secured with ties or ear loops;
- c. include multiple layers of fabric;
- d. allow for breathing without restriction; and
- e. are able to be laundered and machine dried without damage or change to shape.

Section 2.6. Effective Date and Time, Limitations and Area.

The Public Health Order set forth in this Section 2, will become effective at 6:00 a.m., July 31, 2020, and will remain in effect until November 4, 2020. Until such time as this amended Section 2 becomes effective, Section 2 of Ordinance #11, shall remain in full force and effect. This Order is effective within the entirety of the territory of the City of Aspen, Colorado.

Section 2.7. Most Restrictive Standard Controls.

To the extent any State and/or Federal orders or laws are more restrictive than what is set

forth herein, such orders control.

Section 2.8. Penalties.

Failure to comply with this Section 2 is subject to a penalty of \$50 for the first offense, \$250 for the second offense and a mandatory court appearance for any subsequent offense with the penalties contained in Section 1.04.080, of the City of Aspen Municipal Code, including up to a \$2,650 fine and one-year imprisonment or both per day for each violation.

Section 2.9. Previous Resolutions.

This Section 2 shall supersede Resolution No. 40, Series of 2020, as well as Resolutions No. 43 and 54, Series of 2020, upon the effective date set forth in Section 2.6, above.

**Section 2.** Emergency Declaration

It is hereby declared that, in the opinion of the City Council, an emergency exists; there is a need for the preservation of public property, health, peace, or safety of the City of Aspen, its residents, and guests; and, this ordinance and public health order adopted as an emergency ordinance provides the protection of the health, peace and safety of the citizens of the City of Aspen.

**Section 3.** Publication.

The City Clerk is directed that publication of this ordinance shall be made as soon as practical and no later than ten (10) days following final passage.

**Section 4.** Severability.

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional in a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and shall not affect the validity of the remaining portions thereof.

**Section 5.** Effective Date.

Except as otherwise set forth herein, pursuant to Sec.4.11 of the Aspen Municipal Charter, the ordinance shall take effect and be in full force upon adoption of this ordinance by the affirmative votes of at least four (4) members of the Aspen City Council or the unanimous vote of all City Council members present

**Section 6.** Existing Litigation.

This ordinance shall not have any effect on existing litigation and shall not operate as an abatement of any action or proceeding now pending under or by virtue of the ordinances amended as herein provided, and the same shall be construed and concluded under such prior ordinances.

INTRODUCED AND READ as provided by law as an emergency ordinance by the City Council of the City of Aspen on the 27<sup>th</sup> day of July 2020.

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Torre, Mayor

ATTEST:

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Nicole Henning, City Clerk

FINALLY adopted, passed and approved this 28<sup>th</sup> day of July 2020, by

- the unanimous vote of all City Council members present; or
- a vote of four (4) council members.

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Torre, Mayor

ATTEST:

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Nicole Henning