

IN THE CIRCUIT COURT, FOURTH  
JUDICIAL CIRCUIT, IN AND FOR  
DUVAL COUNTY, FLORIDA

CASE NO.: 16-2020-CA-03786

DIVISION: CV-B

JASON I. FRENCH,

Plaintiff,

v.

CITY OF JACKSONVILLE, a political  
Subdivision of the State of Florida,

Defendant.

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**FINAL JUDGMENT DENYING EMERGENCY INJUNCTIVE  
RELIEF AND DECLARATORY JUDGMENT**

This matter came before the Court on the Plaintiff's prayer for a temporary injunction and the City of Jacksonville's Motion to Dismiss Verified Complaint for Emergency Injunctive Relief and Declaratory Judgment ("Motion to Dismiss"). A hearing on Defendant's Motion to Dismiss was held on August 26, 2020, at which counsel for the parties were present. The Court deferred ruling on the Motion to Dismiss and held a hearing on the Plaintiff's prayer for injunctive relief on September 25, 2020, at which counsel for the parties presented evidence and argument. The Court, having reviewed the parties' pleadings and the authority cited therein, considered testimony of witnesses and argument of counsel, and being fully advised in the premises, finds and rules as follows:

**I. INTRODUCTION**

In response to the Covid-19 global pandemic, the City of Jacksonville, like other jurisdictions in Florida and across the nation, took steps designed to protect its citizens from the

Covid-19 virus and to minimize the spread of the virus in this community. One such step is the issuance of an Emergency Executive Proclamation by Jacksonville Mayor Lenny Curry requiring people in public spaces to wear face masks or coverings when not able to engage in social distancing measures. Plaintiff, a resident of Jacksonville, asserts that he has been “negatively impacted” by this mask requirement, asserting that it violates “both [his] and the public’s fundamental Florida Constitutional rights.”

**A. Covid-19 Pandemic**

Coronavirus (Covid-19) is a novel highly-communicable respiratory virus that spreads rapidly among people who are in close contact. The virus affects all age demographics, and causes injuries ranging from mild to severe, resulting in death in many cases, especially among people with underlying chronic health conditions, such as heart disease, lung disease, liver disease, and diabetes. *Gayle v. Meade*, 20-21553-CIV, 2020 WL 3041326, at \*4 (S.D. Fla. June 6, 2020).

“At this time, there is no known cure, no effective treatment, and no vaccine. Because people may be infected but asymptomatic, they may unwittingly infect others.” *S. Bay United Pentecostal Church v. Newsom*, 140 S. Ct. 1613 (2020)(Roberts, C.J., concurring). It is beyond dispute that COVID-19 has “thrust humankind into an unprecedented global public health crisis” that has destroyed lives, businesses and “ravaged every corner of American society.” *Gayle v. Meade*, 20-21553-CIV, 2020 WL 2086482, at \*1 (S.D. Fla. Apr. 30, 2020). *See also, In re Covid-19 Emergency Changes to Admin. of July 2020 Florida Bar Examination*, SC20-939, 2020 WL 3619536, at \*1 (Fla. July 3, 2020)(recognizing “the ongoing public health emergency in this State caused by the [COVID-19] pandemic”).

In response to this crisis, declarations of emergency have been made at all levels of government and drastic measures have been taken throughout society to contain the spread of this virus, including the shuttering of schools, businesses, churches, sporting leagues, entire industries and countless other events. Indeed, the indisputable threat posed by this virus is so severe that Florida Courts have halted all jury trials and suspended all time periods relating to speedy trial in criminal and juvenile court proceedings.

**B. Emergency Executive Proclamation**

Against this backdrop the City of Jacksonville took emergency measures to minimize the spread of this deadly and costly plague.

On June 29, 2020, Mayor Lenny Curry issued Emergency Executive Proclamation 2020-005, requiring every person over the age of six in Jacksonville to wear face masks or coverings in public places when not able to engage in social distancing measures. The Executive Proclamation exempts the face-covering requirement in situations where a facial covering “significantly interferes with the provision or receipt of goods or services offered or received at that establishment.” The Executive Proclamation further directs operators and employees of businesses to ensure that individuals at or in the business comply with the mask requirement. On July 29, 2020, Mayor Lenny Curry issued Emergency Executive Proclamation 2020-006,<sup>1</sup> extending the provisions of Proclamation 2020-005.<sup>2</sup>

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<sup>1</sup> Plaintiff conceded during the August 26, 2020 hearing that the Court’s consideration of the issues presented in Plaintiff’s Complaint are properly directed to Proclamation 2020-006, rather than 2020-005. Plaintiff not only agreed that the new Proclamation supersedes 2020-005, but also conceded that the addition of the phrase “while on duty” in paragraph (4) of 2020-006 rendered moot that portion of Plaintiff’s argument which asserts an Equal Protection Clause violation based on an exemption for public safety, fire, law enforcement, and other life safety personnel.

<sup>2</sup> Section 674.206(b), Jacksonville Ordinance Code limits each emergency declaration to a period of thirty days or less. Accordingly, on August 28, 2020, Mayor Lenny Curry issued Emergency Executive Proclamation 2020-007, which is identical to and extends the provisions of Proclamation 2020-006.

Although the full Proclamation is attached hereto, the relevant provisions are as follows<sup>3</sup>:

(1) Every person over the age of six (6) who is in a public space shall wear a face mask or covering (*including face shields*) when not able to engage in social distancing.

(2) Every operator, employee, customer or patron of a business establishment must wear a face mask or covering (*including face shields*) at all times while at that business establishment unless he or she is able to engage in social distancing or unless wearing a face mask or covering significantly interferes with the provision or receipt of goods or services offered or received at that establishment (i.e. patrons at a restaurant, clients at a barber shop or hair salon, patients at a dentist's office).

(3) The operator and employees of a business establishment shall ensure that every individual in that establishment complies with this Proclamation.

(4) Public safety, fire, law enforcement, and other life safety personnel are exempted from this requirement *while on duty*, as their personal protective equipment requirements will be governed by their respective agencies.

### **C. Procedural History**

Plaintiff filed his Verified Complaint for Emergency Injunctive Relief on or about July 6, 2020. Despite the Complaint's characterization of the requested relief as emergent, Plaintiff never contacted the Court or asked for a hearing. Plaintiff never filed a motion for temporary injunctive relief; rather, the only request was made in the Complaint. The Court, on its own initiative, set a case management conference ("CMC") for August 6, 2020 and directed the parties to be prepared to address any discovery issues and the need for and timing of subsequent hearings. Counsel for both parties appeared at the CMC. During that hearing, Plaintiff advised the Court that no discovery would be necessary, that only legal argument would be presented, and that the only hearing necessary would be on Defendant's Motion to Dismiss, which had been

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<sup>3</sup> The italicized language represents language added to 2020-006 which was not included in 2020-005.

filed on July 28, 2020. A hearing on Defendant's Motion to Dismiss was set for August 26, 2020.

On August 25, 2020, at 5:40 p.m., Plaintiff filed a "Motion for Judicial Notice and Exhibit and Witness List." Plaintiff requested the Court take judicial notice of five documents,<sup>4</sup> presumably those which the Plaintiff intended to use as exhibits during the August 26th hearing, and stated that "Plaintiff's sole witness will be: Dr. Andrew Bostom from Rhode Island; an Internist and epidemiologist." During the August 26th hearing,<sup>5</sup> the City objected to the presentation of live testimony and the introduction of these exhibits given the lack of notice and the fact that the hearing was noticed only for the City's Motion to Dismiss. The Court sustained the City's objection, and heard oral argument on the issues raised in the City's Motion to Dismiss.

During that hearing, the Plaintiff's counsel professed confusion about whether Plaintiff's request for injunctive relief was intended to be heard that day, and for the first time sought to present live testimony at a subsequent hearing. The Court held an evidentiary hearing on Plaintiff's request for injunctive relief on September 25, 2020.

#### **D. Mayor's Authority to Issue Executive Proclamation**

As of the date of this judgment, at least seven other Florida courts have rejected virtually identical arguments that a local ordinance requiring people to wear face masks is unconstitutional. *See Green v. Alachua County*, Case No. 01-2020-CA-001249 (Fla. 8th Cir. Ct. May 26, 2020); *Ham v. Alachua County Board of County Commissioners*, Case No. 1:20-cv-00111-MW/GRJ (N.D. Fla. June 3, 2020); *Machovec v. Palm Beach County*, Case No. 2020CA006920AXX (Fla. 15th Cir. Ct. July 27, 2020); *Power v. Leon County*, Case No. 2020-

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<sup>4</sup> See September 8, 2020 Order on Plaintiff's Motion for Judicial Notice.

<sup>5</sup> Unfortunately, neither party arranged for a court reporter for any hearings in this matter.

CA-001200 (Fla. 2d Cir. Ct. July 27, 2020); *Carroll v. Gadsden County*, Case No. 20-542-CA (Fla. 2d Cir. Ct. Aug. 24, 2020), *Dolata v. City of Deland*, Case No. 2020-10900-CIDL (Fla. 7th Cir. Ct. August 31, 2020), and *Jackson v. Orange County*, Case No. 48-2020-CA-6427-O (Fla. 9th Cir. Ct. September 3, 2020). Plaintiff's counsel, Mr. Sabatini, is counsel for the plaintiffs in almost all these matters.

This Court has had the benefit of the rationale articulated by her learned colleagues in these cases, as has Plaintiff's counsel. During the hearing on August 26, 2020, this Court noted that Judge John Cooper's Final Judgment in *Power v. Leon County*, *supra*, is already on appeal to the First District Court of Appeal,<sup>6</sup> in whose jurisdiction this Court lies. Having reviewed Judge Cooper's order, the Court inquired of Plaintiff's counsel whether the current challenge involves arguments not addressed by Judge Cooper's order or which are unique to the Proclamation at issue. Plaintiff's counsel asserted that the relevant distinction is that in the *Power v. Leon County* matter the challenged ordinance was adopted by the Leon County Board of County Commissioners, whereas the Proclamation at issue here was issued solely by the Mayor, whose authority to do so Plaintiff challenges.

The Plaintiff's challenge to the Mayor's authority is without merit.

Section 674.206, Jacksonville Ordinance Code states that "[t]he Mayor is responsible for meeting the dangers presented to the City and its people by a disaster. The Mayor may issue executive orders, proclamations and regulations and amend or rescind them in the fulfillment of this responsibility, and these executive orders, proclamations and regulations shall have the force and effect of law during the period for which they are effective." Section 674.207, Jacksonville Ordinance Code further provides that "[i]n addition to all other powers conferred upon the Mayor by law, during a state of disaster emergency he may: (l) take or direct measures

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<sup>6</sup> See, *Power v. Leon County*, Case No. 1D20-2290, First District Court of Appeal.

concerning the conduct of civilians...” Pursuant to this authority, Mayor Curry issued the Executive Proclamations at issue, which clearly “take or direct measures concerning the conduct of civilians” in a declared state of emergency.

Plaintiff’s counsel expressly stated during the August 26, 2020 hearing that Plaintiff is not challenging the authority of Chapter 674, Jacksonville Ordinance Code; only the Mayor’s authority to unilaterally act here without legislative consent of the Jacksonville City Council. These statements are incongruous: Chapter 674 plainly grants the Mayor the unilateral power to issue proclamations directing measures concerning the conduct of civilians to meet the dangers presented to the City and its people by a disaster. If Plaintiff does not challenge this grant of authority in Chapter 674, he cannot reasonably challenge the authority of the Mayor to act pursuant to that authority.<sup>7</sup>

Moreover, Plaintiff cited no authority for his general assertion that executive branch orders with full force and effect of law (such as Mayor Curry’s Proclamation) should be treated differently than those laws originating in a legislative body which are then signed into law by an executive. Indeed, Plaintiff’s counsel, himself a member of the State Legislature, does not challenge Governor Desantis’s authority to issue the many Covid-19 Public Health Emergency Executive Orders signed into law this year. Mayor Curry’s executive orders are to be given no less deference by this Court.

“A duly enacted ordinance of a local government is presumed valid, and the party challenging it carries the burden of establishing its invalidity.” *Hoesch v. Broward County*, 53 So. 3d 1177, 1180 (Fla. 4th DCA 2011). Accordingly, the Court finds that Chapter 674,

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<sup>7</sup> For these reasons the Court rejects Plaintiff’s assertion in paragraph 17 of his Complaint that the Emergency Executive Proclamations at issue are “unlawful because power to mandate masks is nonexistent.” Requiring citizens to wear a face mask or covering is a measure directed at the conduct of civilians.

Jacksonville Ordinance Code granted Mayor Lenny Curry the authority to issue the Emergency Executive Proclamations at issue.<sup>8</sup>

This Court finds no additional arguments were advanced by Plaintiff in this matter which have not been addressed – and uniformly rejected – throughout the state. Nevertheless, this Court will likewise address Plaintiff’s claims and the rationale that requires their defeat.<sup>9</sup>

## II. STANDARD OF REVIEW FOR CONSTITUTIONAL CHALLENGES

Plaintiff’s Complaint is silent on whether the challenge to the Emergency Executive Proclamation is a facial or as-applied challenge. Plaintiff did not assert that the law is unconstitutional as it is applied to him. Rather, Plaintiff averred in his Complaint that the Proclamation at issue violates “both the Plaintiff’s *and the public’s* fundamental Florida Constitutional rights,” and “unduly burdens 900,000 Jacksonville residents and employees.” *See*, Pl.’s Compl., ¶ 22. (Emphasis added) Therefore, Plaintiff’s claims assert that the Emergency Executive Proclamation is facially unconstitutional.<sup>10</sup>

“A facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exist under which the Act would be valid.” *United States v. Salerno*, 481 U.S. 739, 745, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987). “[L]egislative acts are afforded a presumption of constitutionality and [courts] will

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<sup>8</sup> The Court likewise rejects Plaintiff’s assertion that the Mayor lacked authority to issue the Proclamations because Chapter 674, Jacksonville Ordinance Code failed to anticipatorily list every measure the Executive may employ in carrying out the duties imposed upon him by the Code. Taking Plaintiff’s argument to its logical conclusion, no order issued during this pandemic is lawful because the remedy combatting the pandemic was not foreseen in advance. So if Chapter 674 does not expressly reference, *e.g.*, sitting six feet apart, temperature checks, or mask requirements – none of which were reasonably foreseeable before our “social distancing” lexicon developed – Plaintiff asserts the Mayor lacks authority to impose such measures. The Court declines the invitation to so narrowly construe the Mayor’s authority to carry out his duty to meet the dangers presented to the City and its people by a disaster.

<sup>9</sup> As Judge Frank so aptly stated in *Carroll*, this “court’s ruling in this case should not be considered a criticism of [Mr. French], nor a minimization of his concerns. [Mr. French] is authentically offended by the ordinances and seeks to vindicate important individual rights.” However, his claims suffer the same defects as those brought by others.

<sup>10</sup> During the hearing on Defendant’s Motion to Dismiss, Plaintiff asserted that his challenge to the Emergency Executive Proclamation is a facial challenge, rather than an as-applied challenge.



construe the challenged legislation to effect a constitutional outcome when possible.” *Fraternal Order of Police, Miami Lodge 20 v. City of Miami*, 243 So. 3d 894, 897 (Fla. 2018). “The presumption of constitutionality is overcome only upon a showing of invalidity ‘beyond reasonable doubt,’ meaning that the presumption ‘applies unless the legislative enactments are clearly erroneous, arbitrary, or wholly unwarranted.’” *Patronis v. United Ins. Co. of Am.*, 2020 WL 2897023, at \*2 (Fla. 1st DCA June 3, 2020), *reh'g denied* (Aug. 3, 2020)(quoting *State v. Hodges*, 506 So. 2d 437, 439 (Fla. 1st DCA 1987)).

### **III. PLAINTIFF’S CLAIM FOR INJUNCTIVE RELIEF**

Plaintiff seeks injunctive relief enjoining the City from enforcing the Emergency Executive Proclamations at issue. In support of this request, the Plaintiff presented the testimony of Dr. Andrew Bostom, who is board certified in internal medicine. At the hearing on September 25, 2020, the Court heard testimony from Dr. Bostom, and also from the City’s expert, Dr. Michael Sands, who is board certified in internal medicine and infectious diseases, with a Masters Degree in Public Health. The Court considered this testimony, along with the authority provided by the parties.

The issuance of a preliminary injunction is “an extraordinary remedy which should be granted sparingly.” *City of Jacksonville v. Naegele Outdoor Adver. Co.*, 634 So.2d 750, 752 (Fla. 1st DCA 1994) (quoting *Thompson v. Planning Comm'n*, 464 So.2d 1231 (Fla. 1st DCA 1985)). To obtain an injunction, the movant must show four criteria: (1) the likelihood of irreparable harm, (2) the unavailability of an adequate remedy at law, (3) substantial likelihood of success on the merits, and (4) that the public interest supports the injunction. *Id.* Plaintiff must prove each element with competent, substantial evidence. *State, Dep't of Health v. Bayfront HMA Med. Ctr., LLC*, 236 So. 3d 466, 472 (Fla. 1st DCA 2018), *reh'g denied* (Feb. 21, 2018). *See, City of*

*Jacksonville v. Naegele Outdoor Advert. Co.*, 634 So. 2d at 754 (“Clear, definite, and unequivocally sufficient factual findings must support each of the four conclusions necessary to justify entry of a preliminary injunction.”) If Plaintiff fails to prove one of the required elements, the request for injunctive relief must be denied. *State, Dep’t of Health v. Bayfront HMA Med. Ctr., LLC*, 236 So. 3d at 472. A proper consideration of these factors to the Plaintiff’s case requires denial of the requested injunctive relief.

A. Clear Legal Right to Relief; Substantial Likelihood of Success on the Merits.

Before a temporary injunction may issue, the movant must establish a clear legal right to relief, demonstrating a substantial likelihood of success on the merits of the claims advanced. *City of Jacksonville v. Naegele*, 634 So. 2d at 753. “A substantial likelihood of success on the merits is shown if good reasons for anticipating that result are demonstrated. It is not enough that a merely colorable claim is advanced.” *Id.* To determine Plaintiff’s likelihood of success on the merits, the Court will address each of Plaintiff’s claims.

1. Right to Privacy

Plaintiff asserts that the facial covering mandate violates the Privacy Clause of Article I, Section 23 of the Florida Constitution. Florida’s constitutional right of privacy is fundamental. *Winfield v. Div. of Pari-Mutuel Wagering, Dep’t of Bus. Reg.*, 477 So. 2d 544, 547 (Fla. 1985). The State’s intrusion on that right must be justified “by demonstrating that the challenged regulation serves a compelling state interest and accomplishes its goal through the use of the least intrusive means.” *Id.*

However, the right to privacy included in the Florida Constitution “was not intended to provide an absolute guarantee against all governmental intrusion into the private life of an individual.” *Florida Board of Bar Examiners Re: Applicant*, 443 So. 2d 71, 74 (Fla. 1983). It

does not “confer a complete immunity from governmental regulation and will yield to compelling governmental interests.” *Winfield*, 477 So. 2d at 547.

However, before the right of privacy even attaches, a reasonable expectation of privacy must exist. *Id.* Thus, implicit within the question of whether article I, section 23 of the Florida Constitution prevents the City of Jacksonville from requiring its citizens to wear face masks in public places when unable to socially distance, is the threshold question of whether the law recognizes an individual’s legitimate expectation of privacy in not wearing a mask in a public place. *Id.* This Court holds that no such privacy right exists.

In *Picou v. Gillum*, 874 F.2d 1519 (11th Cir. 1989), the Eleventh Circuit addressed a Florida law requiring motorcycle riders to wear helmets. The *Picou* court’s analysis in holding Florida’s helmet requirement a rational exercise of its police power is instructive here:

[T]here is no broad legal or constitutional “right to be let alone” by government. In the complex society in which we live, the action and nonaction of citizens are subject to countless local, state, and federal laws and regulations. Bare invocation of a right to be let alone is an appealing rhetorical device, but it seldom advances legal inquiry, as the “right”—to the extent it exists—has no meaning outside its application to specific activities. The Constitution does protect citizens from government interference in many areas—speech, religion, the security of the home. But the unconstrained right asserted by appellant has no discernable bounds, and bears little resemblance to the important but limited privacy rights recognized by our highest Court. As the Court has stated, “the protection of a person’s *general* right to privacy—his right to be let alone by other people—is like the protection of his property and his very life, left largely to the law of the individual States.

Whatever merit may exist in appellant’s further contention that paternalistic legislation is necessarily invalid, this argument is inapplicable to Fla.Stat. § 316.211. The helmet requirement does not implicate appellant alone. Motorcyclists normally ride on public streets and roads that are maintained and policed by public authorities. Traffic is often heavy, and on highways proceeds at high rates of speed. The required helmet and faceshield may

prevent a rider from becoming disabled by flying objects on the road, which might cause him to lose control and involve other vehicles in a serious accident. See *Bogue*, 316 F.Supp. at 489.

It is true that a primary aim of the helmet law is prevention of unnecessary injury to the cyclist himself. But the costs of this injury may be borne by the public. A motorcyclist without a helmet is more likely to suffer serious head injury than one wearing the prescribed headgear. State and local governments provide police and ambulance services, and the injured cyclist may be hospitalized at public expense.

*Picou v. Gillum*, 874 F.2d at 1521-22.

The comparisons are obvious. As with wearing a helmet, wearing a mask to slow the spread of a deadly disease prevents injury to the public. Doing so in public places when unable to socially-distance from others does not implicate a right of privacy. Indeed, as with wearing a helmet on an open road, there is little that could be termed private in the decision whether to wear a mask in public. See, *Pottinger v. City of Miami*, 810 F. Supp. 1551, 1574 (S.D. Fla. 1992) (there is no “reasonable expectation of privacy in performing certain activities in public places”).

The crux of Plaintiff’s argument is that each individual has “the right to make choices pertaining to one’s health and to determine what shall be done with one’s own body.” (Compl., ¶19). Plaintiff sets no discernible bounds on the right to make those choices, despite the fact that Florida law is replete with permissible restrictions on an individual’s right to “make choices pertaining to one’s health and to determine what shall be done with one’s own body.”

Plaintiff’s reliance on *Burton v. State*, 49 So. 3d 263, 265 (Fla. 1st DCA 2010) is similarly misplaced. *Burton* addressed a person’s right to choose or refuse medical treatment. That individual decision does not have a cost to be borne by the public – financial, health or

otherwise. Here, the cost of an infected individual foregoing a mask will be borne by the public in the spread of the virus to others.

The Court likewise rejects Plaintiff's argument that a facial covering is a "device" or analogous to an intrusive medical procedure. A mask is no more a medical device than a helmet is, and wearing a mask to prevent the spread of an airborne virus is no more intrusive than wearing a helmet.

## 2. Substantive Due Process

Plaintiff asserts the Executive Order violates his substantive due process rights under the Florida Constitution because it is an arbitrary and unreasonable infringement on his personal liberty "not backed by a compelling state interest." Compl., ¶14. "Substantive due process protects fundamental rights from unwarranted encroachment from the government." *Kephart v. Hadi*, 932 So. 2d 1086, 1090 n.4 (Fla. 2006). Although the right to privacy is a fundamental right, for the reasons set forth above, it is not implicated by the Emergency Executive Proclamation because Plaintiff does not have a privacy right not to wear a mask in a public place.

"The basic test of substantive due process is whether the state can justify the infringement of its legislative activity upon personal rights and liberties." *State v. Robinson*, 873 So. 2d 1205, 1214 (Fla. 2004) (quoting *In re Forfeiture of 1969 Piper Navajo*, 592 So. 2d 233, 235 (Fla. 1992)). When fundamental rights are not implicated, as here, the law is subject to rational basis analysis, requiring that the law "bears a reasonable relation to a permissible legislative objective and is not discriminatory, arbitrary or oppressive." *Lasky v. State Farm Ins. Co.*, 296 So. 2d 9, 15 (Fla. 1974).

"[T]he preservation of the public health is one of the prime duties resting upon the sovereign power of the State. The health of the people has long been recognized as one of the

greatest social and economic blessings. The enactment and enforcement of necessary and appropriate health laws and regulations is a legitimate exercise of the police power which is inherent in the State and which it cannot surrender.” *Varholy v. Sweat*, 153 Fla. 571, 576 (Fla. 1943). Here, the City has a legitimate—if not compelling—interest in protecting the health of its citizens by slowing the spread of a highly communicable and often deadly virus during a global pandemic. *See Henry v. DeSantis*, 2020 WL 2479447, \*7 (S.D. Fla. May 14, 2020) (holding that slowing the spread of COVID-19 “is most certainly a ‘legitimate’ government interest”); *In re Abbott*, 954 F.3d 772, 784 (5th Cir. 2020) (quoting *Jacobson v. Commonwealth of Mass.*, 197 U.S. 11, 31 (1905)) (“The bottom line is this: when faced with a society-threatening epidemic, a state may implement emergency measures that curtail constitutional rights so long as the measures have at least some “real or substantial relation” to the public health crisis and are not “beyond all question, a plain, palpable invasion of rights secured by the fundamental law.”)

Further, the Court finds that the Executive Proclamation has a reasonable and rational relationship to the City’s interest in protecting the health of its citizens by slowing the spread of Covid-19. Specifically, it recognizes that Covid-19 is commonly spread in the air by speaking, coughing, or sneezing between people in close proximity, and that facial coverings help reduce transmission of the virus. The Proclamation bears a reasonable relation to a permissible legislative objective and is not discriminatory, arbitrary, oppressive, clearly erroneous, or wholly unwarranted.

### 3. Void for Vagueness

Plaintiff argues the Emergency Executive Proclamation is too vague for a person of average intelligence to understand, therefore leading to the possibility of arbitrary enforcement. ““A statute will withstand constitutional scrutiny under a void-for-vagueness challenge if it is

specific enough to give persons of common intelligence and understanding adequate warning of the proscribed conduct.” *Frear v. State*, 700 So. 2d 465, 466 (Fla. 1st DCA 1997) (quoting *Sanicola v. State*, 384 So. 2d 152, 153 (Fla. 1980)). Plaintiff asserts that a person of common intelligence cannot understand the terms, “public space,” “face mask or covering,” “operator,” “business establishment,” “patron of a business establishment,” “significantly interfere,” or “ensure.” As Judge Rowe observed:

This Court must have a higher opinion of the common intelligence of City residents than the Plaintiff has. The Court does not believe that persons of common intelligence in the City of [Jacksonville] would be so flummoxed by these phrases that they would have to guess at what they mean. All of these phrases have common sense, plain usage meanings, none of them is unduly ambiguous, and they are used in common conversation among residents. Certainly, the phrases are not so vague that they render the City’s face mask ordinance unconstitutional.

*Dolata v. City of Deland*, Case No. 2020-10900-CIDL (Fla. 7th Cir. Ct. August 31, 2020). This Court finds that the Emergency Executive Proclamations at issue are not unconstitutionally vague.

#### 4. Equal Protection

Plaintiff contends the Executive Order violates the Equal Protection Clause of the Florida Constitution because it requires owners and employees of business establishments to “ensure” compliance with the mask mandate.<sup>11</sup> If a challenged law does not implicate a suspect class or fundamental right protected by the Florida Constitution, the rational basis test will apply to evaluate an equal protection challenge. *Estate of McCall v. United States*, 134 So. 3d 894, 901 (Fla. 2014). This Court has already found that the challenged law bears a reasonable and rational

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<sup>11</sup> Plaintiff also asserted an Equal Protection Clause violation because the Proclamation exempts public safety personnel from the facial covering mandate. However, during the August 26, 2020 hearing, Plaintiff subsequently conceded that his argument regarding public safety personnel was mooted by the City’s amendment to the Proclamation.

relationship to the City's interest in protecting the health of its citizens by slowing the spread of Covid-19. With respect to its allegedly disparate treatment of business owners and employees tasked with ensuring the compliance of patrons, "equal protection demands only that a distinction which results in unequal treatment bear some rational relationship to a legitimate state purpose." *Duncan v. Moore*, 754 So. 2d 708, 712 (Fla. 2000).

Here, the Executive Proclamation's treatment of business owners and employees is rationally related to the City's public health interest. Business owners and employees are well-situated to ensure customers comply with this law while inside their respective establishments, just as they ensure customers comply with all other rules for their businesses. Therefore, the different treatment of business owners and employees is rationally related to ensuring people wear facial coverings inside business establishments, thereby lowering the transmission of COVID-19. Accordingly, this Court finds no Equal Protection violation.

Plaintiff has not established a clear legal right to relief on any of his claims against the City.

**B. Substantial Threat of Irreparable Harm Absent Issuance of Injunction**

Before a temporary injunction is issued, a plaintiff must demonstrate that without it plaintiff will suffer irreparable injury; injury which cannot be redressed in a court of law. *Tamiami Trail Tours, Inc. v. Greyhound Lines, Inc., S. Greyhound Lines Div.*, 212 So. 2d 365, 366 (Fla. 4th DCA 1968). "Irreparable injury will never be found where the injury complained of is doubtful, eventual or contingent." *Jacksonville Elec. Auth. v. Beemik Builders & Constructors, Inc.*, 487 So. 2d 372, 373 (Fla. 1st DCA 1986)(citation omitted).

Plaintiff here asserts that he will suffer irreparable harm "because his constitutional rights are being violated" and "the mask requirement infringes Plaintiff's right to privacy under the



Florida Constitution.” He asserts a similar injury would be suffered by all “residents and employees” of Jacksonville. As more fully set forth above, Plaintiff’s constitutional right to privacy is not implicated by the Emergency Executive Proclamations at issue. Thus, he will not suffer the asserted harm.

Beyond his general objection to being told what to wear,<sup>12</sup> Plaintiff alleged no specific harm which would befall him in the absence of an injunction. During the September 25, 2020 hearing, Plaintiff asserted that when he is in situations in which the Proclamations at issue would require him to wear a mask, he views wearing a mask as uncomfortable and said that he cannot speak clearly while wearing it. Plaintiff failed to assert a reasonable probability of actual injury. Rather, Plaintiff’s asserted injury is the alleged loss of privacy he will suffer by being forced by the government to wear a mask. Accordingly, Plaintiff failed to establish that he would suffer actual irreparable injury following the denial of the injunction.

C. No Adequate Remedy at Law.

Injunctive relief is not available where there is an adequate remedy at law available to the complaining party. *Meritplan Ins. Co. v. Perez*, 963 So. 2d 771, 776 (Fla. 3d DCA 2007). Plaintiff has failed to assert any actual damage which could not be remedied by law. Plaintiff broadly asserts that the privacy violation imposed by the mask requirement cannot be cured by money damages, and he, therefore, has no adequate remedy at law. As previously noted, there is no constitutional right to privacy implicated here. Further, as set forth above, Plaintiff has failed to establish how he is impacted or injured by the mask requirement at issue, other than, at best, a “*de minimis* infringement on the Plaintiff’s public interactions.” *Green v. Alachua County*, Case No. 01-2020-CA-001249 (Fla. 8th Cir. Ct. May 26, 2020). As Plaintiff has neither alleged nor

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<sup>12</sup> During the hearing, Plaintiff testified “as long as I’m being decent I can wear whatever I want,” and asserted that the government did not have the right to tell him what to wear.

proven facts demonstrating that, absent an injunction, he will incur irreparable harm because he has no adequate remedy at law, he has failed to meet his burden to enjoin enforcement of the law at issue. *See, Sammie Investments, LLC v. Strategica Capital Associates, Inc.*, 247 So. 3d 596, 600 (Fla. 3d DCA 2018).

D. Consideration of the Public Interest

To sustain a temporary injunction a party must also establish that injunctive relief will serve the public interest. *Florida Dep't of Health v. Florigrown, LLC*, 1D18-4471, 2019 WL 2943329, at \*4 (Fla. 1st DCA July 9, 2019), *review granted*, SC19-1464, 2019 WL 5208142 (Fla. Oct. 16, 2019). Plaintiff here has not shown the public interest is served by enjoining the enforcement of the Proclamation at issue. Exactly the opposite is true here. The public interest in preventing the spread of the Coronavirus is served by safety measures contained in the Proclamation.

“In exercising their sound discretion, courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction.” *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982). “An injunction may be denied where the injury to the public outweighs any individual right to relief.” *Knox v. Dist. Sch. Bd. of Brevard*, 821 So. 2d 311, 314 (Fla. 5th DCA 2002). The potential injury to the Jacksonville public that would result from enjoining the City’s ability “to prevent the spread of a presently incurable, deadly, and highly communicable virus far outweighs any individual’s right to simply do as they please.” *See Machovec v. Palm Beach County*, Case No. 2020CA006920AXX (Fla. 15th Cir. Ct. July 27, 2020). The requested injunction would not serve the public interest.

#### **IV. PLAINTIFF'S REQUEST FOR DECLARATORY RELIEF**

Plaintiff must establish he is entitled to a declaration of rights by alleging facts showing that there is a bona fide, actual, present and practical need for a declaration. *See, Okaloosa Island Leaseholders Ass'n, Inc. v. Okaloosa Island Auth.*, 308 So. 2d 120, 122 (Fla. 1st DCA 1975). An allegedly aggrieved party must “make some showing of a real threat of immediate injury, rather than a general, speculative fear of harm that may possibly occur at some time in the indefinite future.” *State v. Florida Consumer Action Network*, 830 So. 2d 148, 152 (Fla. 1st DCA 2002)

For the reasons set forth in this opinion, this Court finds that Plaintiff has failed to show a real threat of immediate injury and is not entitled to declaratory relief.

#### **V. SEPARATION OF POWERS**

In 1905, the United States Supreme Court established the framework governing emergency exercises of state authority during a public health crisis. The plaintiff in *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11, 26 (1905) claimed that he had a Fourteenth Amendment right “to care for his own body and health in such a way as to him seems best.” The Supreme Court rejected this assertion, recognizing that “the liberty secured by the Constitution of the United States to every person within its jurisdiction does not import an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint.” *Id.* Describing a state’s police power to combat an epidemic, the Court explained that “in every well-ordered society charged with the duty of conserving the safety of its members the rights of the individual in respect of his liberty may at times, under the pressure of great dangers, be subjected to such restraint, to be enforced by reasonable regulations, as the safety of the general public may demand.” *Id.* at 29.

The *Jacobson* Court, operating under the same separation of powers principles which guide this Court and every Court in the land, expressly recognized that “[i]t is no part of the function of a court or a jury to determine which one of two modes [to slow the spread of a disease] was likely to be the most effective for the protection of the public against disease. That was for the legislative department to determine in the light of all the information it had or could obtain.” *Id.* at 30. The United States Supreme Court recently confirmed the court’s role in a public health crisis in the specific Covid-19 context, holding that “[o]ur Constitution principally entrusts ‘[t]he safety and the health of the people’ to the politically accountable officials of the States ‘to guard and protect.’” *S. Bay United Pentecostal Church v. Newsom*, 140 S. Ct. 1613 (2020)(Roberts, C.J., concurring)(quoting *Jacobson*, 197 U.S. at 38). “When those officials undertake to act in areas fraught with medical and scientific uncertainties, their latitude must be especially broad.” *Id.* (Citation omitted). *See also, Henry v. DeSantis*, 2020 WL 2479447, at \*9 (S.D. Fla. May 14, 2020)(“[S]o long as the people’s elected leaders are working within the confines of the people’s constitutional rights, courts are not here to second-guess or micromanage their already unenviable jobs guiding us through profoundly unprecedented challenges.”)

During the August 26, 2020 hearing, Plaintiff asserted his position that masks are not helpful in reducing the spread of Covid-19, indicating that this was an issue to be decided by the Court in a trial. During the September 25, 2020 hearing, Plaintiff presented opinion testimony that masks do not have a demonstrably provable effect on slowing the spread of Covid-19.

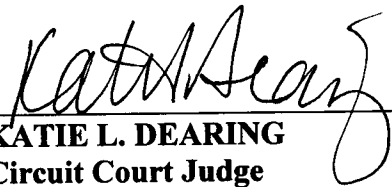
By presenting such testimony, it is clear Plaintiff misapprehends the role of the Court system in our tripartite government. It is not up to the Court to determine whether masks reduce the spread of the virus, though there are many studies suggesting they do, including those cited

by the City's expert. It is no more the Court's job to impose a mask requirement on the citizenry based on these studies than to invalidate a mask requirement based on the opinion of Plaintiff's expert. *See, Picou*, 874 F.2d at 1522. Those are questions for the politically accountable elected representatives of Jacksonville to decide. The Mayor, politically accountable to the City of Jacksonville, has determined that this measure meets the dangers presented to the City and its people by the Covid-19 emergency. As Judge Kastrenakes so aptly put it, "this Court will not second guess the manner in which a co-equal branch of government sought to discharge its sacred duty to protect the general public." *See Machovec v. Palm Beach County*, Case No. 2020CA006920AXX (Fla. 15th Cir. Ct. July 27, 2020).

For the foregoing reasons, it is hereby **ORDERED** and **ADJUDGED** that:

1. Emergency Executive Proclamation 2020-005, 2020-006 and 2020-007 do not violate Plaintiff's constitutional rights, or the constitutional rights of others.
2. Plaintiff's claims for injunctive and declaratory relief are **DENIED**.
3. Judgment is entered in Defendant's favor and against Plaintiff. Plaintiff shall take nothing by this action.

**DONE and ORDERED** in Jacksonville, Duval County, Florida on this 28th day of September, 2020.

  
**KATIE L. DEARING**  
Circuit Court Judge

Copies to Counsel of Record via electronic filing

## EMERGENCY EXECUTIVE PROCLAMATION 2020-005

June 29, 2020

**TO:** All Elected Officials, Department Heads, Division Chiefs, Boards and Independent Agencies – Consolidated City of Jacksonville

**FROM:** Lenny Curry, Mayor

**SUBJECT:** Proclamation and Declaration of Emergency in Accordance with Chapter 674, *Jacksonville Ordinance Code* due to Emergency Conditions.

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**By virtue of the authority vested in me as Mayor by the Charter and as Chief Executive and Administrative Officer of the Consolidated Government, I hereby proclaim and declare a state of emergency exists associated with the Novel Coronavirus Disease 2019 (COVID-19).**

**WHEREAS**, on March 1, 2020, in response to the World Health Organization's declaration of COVID-19 as a Public Health Emergency of International Concern, Governor Ron DeSantis issued Executive Order Number 20-51, declaring a State of Florida Public Health Emergency associated with the threat to Florida residents associated with COVID-19 and invoking the State of Florida emergency response actions by the Florida Department of Health and the State Health Officer; and

**WHEREAS**, on March 9, 2020, in response to eight counties in Florida with positive COVID-19 cases, Governor Ron DeSantis issued Executive Order Number 20-52, directing the Director of the Division of Emergency Management, as the State Coordinating Officer, to execute State of Florida's Comprehensive Emergency Management Plan and other response, recover, and mitigation plans necessary to cope with the emergency; and

**WHEREAS**, Governor DeSantis' Executive Orders 20-51 and 20-52 are hereby incorporated and adopted into this Emergency Executive Proclamation to the extent Duval County is obligated to respond thereto; and

**WHEREAS**, on March 13, 2020, President Donald J. Trump declared a national emergency to combat COVID-19; and

**WHEREAS**, on March 13, 2020, I issued Emergency Executive Proclamation 2020-001 to declare a local state of emergency to invoke the emergency response authorities in Chapter 674, *Ordinance Code*; and

**WHEREAS**, in response to the issuance of several Executive Orders rendered by Governor Desantis associated with the gradual reopening of the state, my local Emergency Proclamations and Executive Orders were no longer required and were allowed to expire; and

**WHEREAS**, the CDC advises that, while a significant portion of individuals with COVID-19 are asymptomatic, the virus can still spread between people interacting in close proximity—for example, speaking, coughing, or sneezing—even if those people are not exhibiting symptoms; and

**WHEREAS**, the CDC recommends wearing cloth face coverings in public settings where other social distancing measures are difficult to maintain or are not being followed 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; and

**WHEREAS**, the CDC defines “social distancing” as limiting close contact (less than 6 feet of separation) with others outside your household in indoor and outdoor spaces; and

**WHEREAS**, the CDC does not recommend wearing cloth face covering for children under the age of 6, or anyone who has trouble breathing, or is unconscious, incapacitated or otherwise unable to remove the mask without assistance; and

**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; and

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

**WHEREAS**, the State of Florida has not preempted local governments from regulating in the field of minimum health requirements with respect to COVID19; and

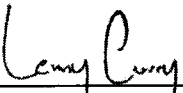
**WHEREAS**, it is necessary to invoke the emergency response authorities in Chapter 674, *Ordinance Code* in order to enable the Consolidated City of Jacksonville to respond to its obligations under Governor DeSantis’ Executive Orders 20-51 and 20-52 and to appropriately respond to the needs of Duval County and its citizens.


**NOW THEREFORE**, it is declared and ordered as follows, to take immediate effect in the Consolidated City (including the Beaches and Baldwin):

- (1) Every person over the age of six (6) who is in a public space shall wear a face mask or covering when not able to engage in social distancing.
- (2) Every operator, employee, customer or patron of a business establishment must wear a face mask or covering at all times while at that business establishment unless he or she is able to engage in social distancing or unless wearing a face mask or covering significantly interferes with the provision or receipt of goods or services offered or received at that establishment (i.e. patrons at a restaurant, clients at a barber shop or hair salon, patients at a dentist’s office).
- (3) The operator and employees of a business establishment shall ensure that every individual in that establishment complies with this Proclamation.
- (4) Public safety, fire, law enforcement, and other life safety personnel are exempted from this requirement, as their personal protective equipment requirements will be governed by their respective agencies.

**ADA ACCOMODATION.** When a customer of a business establishment asserts that he or she has a disability that prevents the individual from wearing a face mask or covering, 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.

**Be it so proclaimed:**


  
\_\_\_\_\_  
Lenny Curry, Mayor

Attested by:   
\_\_\_\_\_  
John C. Sawyer, Jr.  
Corporation Secretary



**Effective as of the 29th day of June, 2020 at 5:00 P.M.**

Form Approved:

  
\_\_\_\_\_  
Jason Gabriel, General Counsel



## EMERGENCY EXECUTIVE PROCLAMATION 2020-006

July 29, 2020

**TO:** All Elected Officials, Department Heads, Division Chiefs, Boards and Independent Agencies – Consolidated City of Jacksonville

**FROM:** Lenny Curry, Mayor

**SUBJECT:** Proclamation Extending Declaration of Emergency and Order in Accordance with Chapter 674, *Jacksonville Ordinance Code* due to Continuing Emergency Conditions.

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**By virtue of the authority vested in me as Mayor by the Charter and as Chief Executive and Administrative Officer of the Consolidated Government, I hereby proclaim and extend the declaration of a state of emergency associated with the Novel Coronavirus Disease 2019 (COVID-19).**

**WHEREAS**, on June 29, 2020, pursuant to Chapter 674, *Jacksonville Ordinance Code*, I executed and issued Emergency Executive Proclamation 2020-005, declaring a local state of emergency to respond to the threat posed to Duval County residents and visitors from the COVID-19 virus and to provide for and authorize imposition of emergency measures to locally address the pandemic; and

**WHEREAS**, the CDC advises that, while a significant portion of individuals with COVID-19 are asymptomatic, the virus can still spread between people interacting in close proximity—for example, speaking, coughing, or sneezing—even if those people are not exhibiting symptoms; and

**WHEREAS**, the CDC recommends wearing cloth face coverings or face shields in public settings where other social distancing measures are difficult to maintain or are not being followed 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; and

**WHEREAS**, the CDC defines “social distancing” as limiting close contact (less than 6 feet of separation) with others outside your household in indoor and outdoor spaces; and

**WHEREAS**, throughout the implementation of Emergency Executive Proclamation 2020-005, requests for clarification of certain portions of the mask mandate were received and, while all requirements of Emergency Executive Proclamation 2020-005 remain in effect, the below language provides clarification of the original intent concerning the ability to wear a face shield as a face covering, the exemption for public safety individuals applies only while such individuals are on duty, and the ADA accommodations are applicable to employees as well as customers. Furthermore, all other words expressed in the below mandate are defined consistent with generally acceptable and understood meanings unless otherwise defined herein; and

**WHEREAS**, Section 674.206(b), *Jacksonville Ordinance Code*, limits each emergency declaration to a period of thirty (30) days; however it also authorizes the Mayor to extend an emergency declaration for an additional thirty (30) days; and

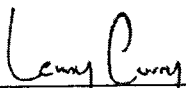
**WHEREAS**, because the emergency threat to the public's health, safety and welfare associated with the COVID-19 pandemic continues to endanger the Consolidated City, it is necessary to extend the emergency response authorities in Chapter 674, *Ordinance Code* in order to enable the Consolidated City of Jacksonville to continue to respond to its obligations under Governor DeSantis' Executive Orders 20-51 and 20-52 and to appropriately respond to the needs of Duval County and its citizens.

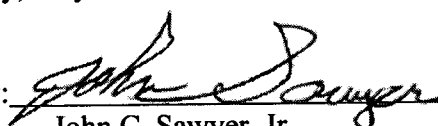
**NOW THEREFORE**, it is declared and ordered that Emergency Executive Proclamation 2020-005, as incorporated herein and as modified below, is hereby extended for an additional thirty (30) days and will continue in effect unless cancelled before that period of time has elapsed. This local state of emergency includes all of Duval County and the Consolidated Government (including the Beaches and Baldwin).

- (1) Every person over the age of six (6) who is in a public space shall wear a face mask or covering (including face shields) when not able to engage in social distancing.
- (2) Every operator, employee, customer or patron of a business establishment must wear a face mask or covering (including face shields) at all times while at that business establishment unless he or she is able to engage in social distancing or unless wearing a face mask or covering significantly interferes with the provision or receipt of goods or services offered or received at that establishment (i.e. patrons at a restaurant, clients at a barber shop or hair salon, patients at a dentist's office).
- (3) The operator and employees of a business establishment shall ensure that every individual in that establishment complies with this Proclamation.
- (4) Public safety, fire, law enforcement, and other life safety personnel are exempted from this requirement while on duty, as their personal protective equipment requirements will be governed by their respective agencies.

**ADA ACCOMODATION.** When a customer or employee of a business establishment asserts that he or she has a disability that prevents the individual from wearing a face mask or covering (including face shields), 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.

**Be it so proclaimed:**

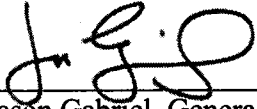
  
Lenny Curry, Mayor

Attested by:   
John C. Sawyer, Jr.  
Corporation Secretary



**Effective as of the 29th day of July, 2020 at 5:00 P.M..**

Form Approved:

A handwritten signature in black ink, appearing to read 'J. Gabriel', is written over a horizontal line.

Jason Gabriel, General Counsel

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## EMERGENCY EXECUTIVE PROCLAMATION 2020-007

August 28, 2020

**TO:** All Elected Officials, Department Heads, Division Chiefs, Boards and Independent Agencies – Consolidated City of Jacksonville

**FROM:** Lenny Curry, Mayor

**SUBJECT:** Proclamation Extending Declaration of Emergency and Order in Accordance with Chapter 674, *Jacksonville Ordinance Code* due to Continuing Emergency Conditions.

---

**By virtue of the authority vested in me as Mayor by the Charter and as Chief Executive and Administrative Officer of the Consolidated Government, I hereby proclaim and extend the declaration of a state of emergency associated with the Novel Coronavirus Disease 2019 (COVID-19).**

**WHEREAS**, on June 29, 2020, pursuant to Chapter 674, *Jacksonville Ordinance Code*, I executed and issued Emergency Executive Proclamation 2020-005, declaring a local state of emergency to respond to the threat posed to Duval County residents and visitors from the COVID-19 virus and to provide for and authorize imposition of emergency measures to locally address the pandemic; and

**WHEREAS**, Section 674.206(b), *Jacksonville Ordinance Code*, limits each emergency declaration to a period of thirty (30) days; however, it also authorizes the Mayor to extend an emergency declaration for an additional thirty (30) days; and

**WHEREAS**, pursuant to this authority, on July 29, 2020, I executed and issued Emergency Executive Proclamation 2020-006 to extend the emergency declaration and order for an additional thirty (30) days; and

**WHEREAS**, because the emergency threat to the public's health, safety and welfare associated with the COVID-19 pandemic continues to endanger the Consolidated City, it is necessary to extend the emergency response authorities in Chapter 674, *Ordinance Code* in order to enable the Consolidated City of Jacksonville to continue to respond to its obligations under Governor DeSantis' Executive Orders 20-51 and 20-52 and to appropriately respond to the needs of Duval County and its citizens.

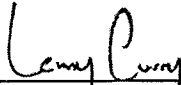
**NOW THEREFORE**, it is declared and ordered that Emergency Executive Proclamations 2020-005 and 2020-006, as incorporated herein, are hereby extended for an additional thirty (30) days and will continue in effect unless cancelled before that period of time has elapsed. This local state of emergency includes all of Duval County and the Consolidated Government (including the Beaches and Baldwin).


- (1) Every person over the age of six (6) who is in a public space shall wear a face mask or covering (including face shields) when not able to engage in social distancing.

- (2) Every operator, employee, customer or patron of a business establishment must wear a face mask or covering (including face shields) at all times while at that business establishment unless he or she is able to engage in social distancing or unless wearing a face mask or covering significantly interferes with the provision or receipt of goods or services offered or received at that establishment (i.e. patrons at a restaurant, clients at a barber shop or hair salon, patients at a dentist's office).
- (3) The operator and employees of a business establishment shall ensure that every individual in that establishment complies with this Proclamation.
- (4) Public safety, fire, law enforcement, and other life safety personnel are exempted from this requirement while on duty, as their personal protective equipment requirements will be governed by their respective agencies.

**ADA ACCOMODATION.** When a customer or employee of a business establishment asserts that he or she has a disability that prevents the individual from wearing a face mask or covering (including face shields), 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.

**Be it so proclaimed:**

  
\_\_\_\_\_  
Lenny Curry, Mayor

Attested by:   
\_\_\_\_\_  
John C. Sawyer, Jr.  
Corporation Secretary



**Effective as of the 28th day of August, 2020 at 5:00 P.M.**

Form Approved:

  
\_\_\_\_\_  
Jason Gabriel, General Counsel

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