



PISMO BEACH COUNCIL AGENDA REPORT

Agenda Item #12.A

SUBJECT/TITLE:

MODIFIED URGENCY ORDINANCE REGARDING USE OF FACE COVERINGS TO PREVENT THE SPREAD OF THE NOVEL CORONAVIRUS (COVID-19)

RECOMMENDATION:

Adopt an **Urgency Ordinance** imposing regulations to protect Essential Workers through the use of face coverings to prevent the spread of the novel Coronavirus (COVID-19).

BACKGROUND:

A severe acute respiratory illness caused by a novel (new) coronavirus, known as COVID-19, has spread globally and rapidly, resulting in illness and death around the world. The World Health Organization has described COVID-19 as a global pandemic.

On March 4, 2020, California Governor Gavin Newsom declared a State of Emergency in response to the increased spread of COVID-19. Additionally, on March 13, 2020, the County of San Luis Obispo declared a countywide emergency. And on March 13, 2020, the President of the United States declared a federal emergency as a result of COVID-19. The City Manager, acting as the Director of Emergency Services, proclaimed the existence of a local emergency on March 16, 2020, and the City Council subsequently ratified this action and adopted a local emergency proclamation.

Since that time, the Centers for Disease Control (CDC) are now advising that individuals use simple cloth face coverings in public in addition to social distancing and good hygiene to help slow the spread of the virus. The City Council considered an urgency ordinance at its May 5, 2020 meeting that would have required both workers in essential businesses and members of the public who patronize those businesses, to wear facial coverings while transacting business. That ordinance did not pass, but the Council modified the urgency ordinance into a regular ordinance and conducted a first reading of the ordinance. The second reading is set for May 19, 2020, and the ordinance would go into effect 30 days later if adopted.

Since the May 5, 2020 meeting, the City Council has received a significant volume of communication from the public regarding adoption of a facial covering ordinance. Many members of the public expressed support for the ordinance, and many others opposed such an ordinance.

Staff has prepared a revised urgency ordinance (**Attachment 1**) that modifies the requirements that were set forth in the prior urgency ordinance to address many of the concerns that members of the public expressed as bases for opposing such an ordinance.

The revised ordinance still requires facial coverings for employees working in those businesses that are permitted to operate under applicable county and state regulations, but only in those instances where the employee is working in a publicly accessible area

of the business and where the employee is unable to maintain a six-foot separation from members of the public patronizing the business.

The ordinance does not, however, require such coverings for members of the public who patronize such businesses. Instead, each business will be required to post a notice at publicly accessible entrances to the business that encourage members of the public to wear facial coverings when social distancing is not possible. The sign would contain information about recommendations from the CDC, and encourage members of the public to avoid entering the business if they have a cough or fever. Finally, the ordinance does contain an exemption for employees who obtain medical verification of their inability to safely wear facial coverings as required by the ordinance.

Conclusion and Recommendation

Staff recommends that the Council consider adopting an Urgency Ordinance (**Attachment 1**) imposing regulations to protect Essential Workers through the use of face coverings to prevent the spread of the novel Coronavirus (COVID-19). In accordance with Government Code section 36937(b), for the immediate preservation of the public peace, health or safety, an urgency ordinance may be adopted without requiring a second reading. Urgency ordinances must be adopted by a four-fifths vote of the Council.

If the Council acts to adopt this urgency ordinance as drafted, *the provisions of the ordinance would go into effect at 5:00 p.m. on Wednesday, May 20, 2020*, and remain in effect until further action by the Council to modify or repeal it.

FISCAL IMPACT:

No immediate fiscal impact is anticipated from the adoption of the ordinance. Minor potential costs of code enforcement for businesses and individuals who refuse or fail to comply with the ordinance.

ALTERNATIVES:

1. Do not adopt the ordinance; provide staff with alternate direction.

ATTACHMENTS:

1. Proposed Urgency Ordinance

Prepared by:
Dave Fleishman, City Attorney

Meeting Date: May 19, 2020

Submitted by: James R. Lewis, City Manager

City Manager Approval:



ORDINANCE NO. O-2020-XXX

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PISMO BEACH, CALIFORNIA IMPOSING REGULATIONS TO PROTECT ESSENTIAL WORKERS THROUGH THE USE OF FACE COVERINGS TO PREVENT THE SPREAD OF THE NOVEL CORONAVIRUS (COVID-19)

WHEREAS, conditions of peril to the safety of persons and property have arisen within the City of Pismo Beach, due to the Novel Coronavirus (COVID-19); and

WHEREAS, on March 4, 2020, the governor of the State of California declared a state of emergency due to conditions caused by COVID-19; and

WHEREAS, on March 13, 2020, the Director of Emergency Services for the County of San Luis Obispo declared a state of emergency due to conditions caused by COVID-19 and issued County of San Luis Obispo's Local Emergency Order and Regulation No. 4; and

WHEREAS, on March 13, 2020, the President of the United States declared a state of emergency due to conditions caused by COVID-19; and

WHEREAS, on March 16, 2020, the City Council of the City of Pismo Beach declared a state of emergency within the City of Pismo Beach due to conditions caused by COVID-19; and

WHEREAS, the Centers for Disease Control is now advising that individuals use simple cloth face coverings in public in addition to social distancing and good hygiene to help slow the spread of the virus; and

WHEREAS, workers continue to provide essential services during this emergency, and some of these workers face an outsized risk of exposure. Workers who come into frequent contact with the public must also be protected from infection; and

WHEREAS, in the interest of public peace, health, and safety as affected by the emergency caused by the spread of COVID-19, it is necessary to issue these regulations related to the protection of the public peace, health and safety.

NOW, THEREFORE, the City Council of the City of Pismo Beach does ordain as follows:

SECTION 1.

Effective 5:00 p.m. on May 20, 2020, all places of business open to business within the City of Pismo Beach shall post at each public entrance to the business a sign not smaller than 8.5 inches x 11 inches and not less than 28-point type stating substantially as follows:

Be Respectful – Wear a Mask

The United States Centers for Disease Control (CDC) recommends that people wear a cloth face covering to cover their nose and mouth in the community setting. This is an additional public health measure people should take to reduce the spread of COVID-19 in addition to (not instead of) social distancing, frequent hand cleaning and other everyday preventive actions. Avoid entering this facility if you have a cough or fever and maintain a minimum six-foot distance from others while in this facility.

Do Your Part – Stay Apart**SECTION 2.**

All employees employed in businesses within the City of Pismo Beach who can safely wear a face covering over their nose and mouth are required to do so when working in publicly accessible areas of the business where the employee is unable to maintain a minimum six-foot distance from patrons or visitors of the business. As used in this ordinance, an employee can safely wear a facial covering unless the employee provides his/her employer with written documentation from a health care provider attesting under penalty of perjury that the employee's health would be seriously and adversely affected by the face covering requirement set forth in this ordinance. As used in this ordinance, a "health care provider" shall have the same meaning as that set forth in Government Code Section 12945.2.

SECTION 3.

All business owners or operators shall ensure their employees comply with the requirements of this ordinance, and they shall provide, pay for, or reimburse their employees for face coverings as needed to comply with this ordinance. Single-use face coverings shall be properly discarded into trash receptacles when no longer in use. All persons, including non-medical Essential Workers are discouraged from using Personal Protective Equipment (PPE), such as N95 masks, for non-medical reasons.

SECTION 4.

Any violation of this ordinance is punishable by an administrative penalty pursuant to Pismo Beach Municipal Code Chapters 1.24 and 2.32.

SECTION 5.

This ordinance shall become effective immediately upon passage and adoption hereof, as it is an urgency ordinance intended to immediately protect the public welfare, health and safety. This ordinance shall be reviewed on a periodic basis by the City Council, not to exceed a period of ninety days, to determine the continued need for the ordinance.

SECTION 6.

Under the provisions of the California Environmental Quality Act (CEQA) Guidelines Section 15061 (b) (3), this ordinance is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, such as the adoption of the regulations contained herein, the activity is not subject to CEQA.

SECTION 7.

This ordinance shall not be interpreted in any manner to conflict with controlling provisions of state or federal law, including, without limitation, the Constitution of the State of California. If any section, subsection, or clause of this ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected thereby. If this ordinance, or any section, subsection or clause of this ordinance shall be deemed unconstitutional or invalid as applied to a particular appeal, the validity of this ordinance and its sections, subsections, and clauses in regard to other contracts shall not be affected.

SECTION 7.

The City Clerk shall certify to the passage and adoption of this Ordinance, shall enter the same in the book of original ordinances of the City and shall make a minute of the passage and adoption thereof in the records of the meeting at which the same is passed and adopted.

Before the expiration of fifteen (15) days after the passage of this Ordinance, the City Clerk shall cause the same to be posted in three public places within the City of Pismo Beach, to wit: 1) City Hall, 760 Mattie Road, Pismo Beach, 2) U.S. Post Office, Shell Beach Road, Pismo Beach, 3) U.S. Post Office, Crest Drive, Pismo Beach.

UPON MOTION OF Council Member _____, seconded by Council Member _____, the foregoing urgency ordinance was adopted by the City Council of the City of Pismo Beach this 19th day of May 2020, by the following vote:

- AYES:**
- NOES:**
- ABSENT:**
- ABSTAIN:**
- RECUSED:**

Approved:

Attest:

Ed Waage, Mayor

Erica Inderlied, City Clerk

APPROVED AS TO FORM:

David M. Fleishman, City Attorney

CERTIFICATION OF ORDINANCE POSTING
Government Code §40806

STATE OF CALIFORNIA }
 } ss.
COUNTY OF SAN LUIS OBISPO }

I, Erica Inderlied, the City Clerk of the City of Pismo Beach, California, hereby certify in accordance with California Government Code Section 40806 that the foregoing document is a true and correct copy of **Ordinance No. O-2020-XXX**, titled **AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PISMO BEACH, CALIFORNIA IMPOSING REGULATIONS TO PROTECT ESSENTIAL WORKERS THROUGH THE USE OF FACE COVERINGS TO PREVENT THE SPREAD OF THE NOVEL CORONAVIRUS (COVID-19)**, and that I caused the same to be duly posted in three public places within the City within fifteen (15) days of adoption thereof, pursuant to the requirements of California Government Code Section 36933.

Dated this _____ day of May, 2020. Witness my hand and official seal.

Erica Inderlied, City Clerk