

**AN EMERGENCY ORDINANCE TO SUPPRESS THE SPREAD OF THE NOVEL
CORONAVIRUS, SARS-CoV-2, AND THE DISEASE IT CAUSES, COMMONLY
REFERRED TO AS COVID-19**

WHEREAS, on March 11, 2020, the World Health Organization declared the outbreak of the novel coronavirus, SARS-CoV-2, and the disease it causes, commonly referred to as COVID-19, a pandemic (for reference in this ordinance, this virus and the disease that it causes are referred to as “COVID-19”); and

WHEREAS, on March 12, 2020, Governor Ralph S. Northam issued Executive Order Number Fifty-One (“EO 51”) declaring a state of emergency for the Commonwealth of Virginia because of the COVID-19 pandemic; EO 51 acknowledged the existence of a public health emergency arising from the COVID-19 pandemic and that it constitutes a “disaster” as defined by Virginia Code § 44-146.16 because of the public health threat presented by a communicable disease anticipated to spread; and

WHEREAS, on March 14, 2020, the City Manager, acting as the Director of Emergency Management, declared a local emergency because of the COVID-19 pandemic pursuant to his authority under Virginia Code § 44-146.21, and this declaration was confirmed by the Harrisonburg City Council on March 24, 2020; and

WHEREAS, on March 13, 2020, the President of the United States declared a national emergency in response to the spread of COVID-19; and

WHEREAS, COVID-19 spreads person to person and, at this time, it appears that COVID-19 is spread primarily through respiratory droplets, which can land in the mouths or noses of people who are nearby or possibly be inhaled into the lungs; spread is more likely when people are in close contact with one another (within about six feet); and

WHEREAS, COVID-19 is extremely easy to transmit, can be transmitted by infected people who show no symptoms, and the population has not developed herd immunity; and

WHEREAS, at this time, there is no known cure, no effective treatment, no vaccine, and because people may be infected but asymptomatic, they may unwittingly infect others; and

WHEREAS, the World Health Organization, the United States Centers for Disease Control and Prevention (“Centers for Disease Control”) and the Virginia Department of Health have identified several behaviors and practices that are fundamental in controlling the spread of COVID-19 in the community: frequently washing hands, sanitizing frequently touched surfaces, wearing a cloth face covering when in public, maintaining a separation of at least six feet between people (“social distancing” or “physical distancing”), limiting the size of gatherings in public places, and limiting the duration of gatherings; and

WHEREAS, the World Health Organization advises that people take a number of precautions, including: (i) maintaining social distancing because when someone coughs, sneezes, or speaks they spray small liquid droplets from their nose or mouth which may contain virus, and if other persons are too close, they can breathe in the droplets, including the COVID-19 virus, if the person coughing, sneezing, or speaking has the disease; and (ii) avoiding crowded places because when people are in crowds, they are more likely to come into close contact with someone that has COVID-19 and it is more difficult to maintain social distancing; and

WHEREAS, the Centers for Disease Control caution that: (i) the more people a person interacts with at a gathering and the longer that interaction lasts, the higher the potential risk of becoming infected with COVID-19 and COVID-19 spreading; (ii) the higher level of community transmission in the area that a gathering is being held, the higher the risk of COVID-19 spreading during the gathering; and (iii) large in-person gatherings where it is difficult for persons to remain spaced at least six feet apart and attendees travel from outside the local area pose the highest risk of COVID-19 spreading; and

WHEREAS, since Governor Northam issued EO 51 on March 13, 2020, he has issued several more Executive Orders jointly with Orders of Public Health Emergency issued by M. Norman Oliver, MD, MA, State Health Commissioner, pertaining to COVID-19; as of the date of adoption of this ordinance, “Executive Order Number Sixty-Seven (2020) and Order of Public Health Emergency Seven, Phase Three Easing of Certain Temporary Restrictions Due to Novel Coronavirus (COVID-19)” (collectively referred to as “EO 67”), which became effective at 12:00 a.m. on July 1, 2020, is in effect;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Harrisonburg, Virginia, that:

1. Purpose

For the reasons stated in the recitals, the purpose of this ordinance is to suppress the spread of COVID-19.

2. Authority

This ordinance is authorized by Section 25 of the Harrisonburg City Charter, which empowers the City Council to “secure the inhabitants of the city from contagious, infectious or other dangerous diseases.”

3. Definitions

The following definitions apply to this ordinance:

- a) “Expressive Activity” means a non-commercial activity in which a person intends to convey a lawful message through speech or conduct that is likely to be perceived by an observer of the speech or conduct, and includes and lawful public gathering, demonstration, procession, or parade in which the primary purpose is to exercise the rights of free speech or peaceable assemble.
- b) “Face covering” means an item normally made of cloth or various other materials with elastic bands or cloth ties to secure over the wearer’s nose and mouth in an effort to contain or reduce the spread of potentially infectious respiratory secretions at the source (*i.e.*, the person’s nose and mouth).
- c) “Gathering” means a planned or spontaneous event, indoors or outdoors, with people participating or attending for a common purpose such as a community event, concert, festival, conference, parade, sporting event, parties (including parties at private residences), celebrations, and other social events, whether they occur indoors or outdoors. “Gathering” does not include a place of employment where persons are present to perform their functions of employment, events or activities on the grounds of an institution of higher education or government or school-owned property, or persons engaging in religious exercise at their religious institution or other place of religious significance.

- d) “Public place” means any place other than a person’s residence or personal vehicle that is indoors, or the indoor portion of the place, and generally open to the public including, but not limited to, retail stores, food establishments, theaters, personal care and personal grooming services, and transportation other than a personal vehicle. “Public place” does not include institutions of higher education and other schools, fitness and other exercise facilities, religious institutions, indoor shooting ranges, and courts.

4. Limitation of the Number of Attendees at Gatherings

- a) *Gatherings of more than 50 persons prohibited; exceptions.* All public and private in-person gatherings of more than 50 persons are prohibited, provided that this limitation does not apply to:
1. Expressive activity on a public street, public sidewalk, or other public property as permitted by applicable law.
 2. Gatherings for religious exercise including, but not limited to, religious ceremonies.
 3. Wedding ceremonies and wedding receptions.
 4. Commercial establishments and 501(c)(3) non-profit organizations adhering to Executive Order Number Sixty-Seven (2020) of the Governor of Virginia (or any successor order) and all associated guidance, provided that any gathering under this exemption shall not exceed the lesser of 50% of the lowest occupancy load, if applicable, or 250 persons.
- b) *Persons working not counted.* Persons working at gatherings, either as employees or independent contractors, do not count towards the limit on the number of persons at a gathering.

5. Executive Orders and Orders of Public Health Emergencies Not Expressly Addressed by this Ordinance are Not Superseded

Except as expressly provided in Section 4 this ordinance does not supersede any requirement, recommendation, or guidance established in EO 67, as it may be further amended or superseded, or any Order of Public Health Emergency, and this includes, but is not limited to, any requirement, recommendation, or guidance pertaining to establishing and maintaining minimum physical distances from other persons. Any use, activity, behavior, or practice exempted from this ordinance is subject to any applicable requirement, recommendation, or guidance established in EO 67, as it may be further amended or superseded, any Order of Public Health Emergency, or any workplace safety regulations.

6. Penalties

- a) *Penalty for violation of Section 4.* A violation of Section 4 by the owner or tenant of the private property on which the gathering is located, after first being warned by a law enforcement officer to disperse the gathering and failing to do so, is punishable as a Class 3 misdemeanor. A violation of Section 5 by any person attending a gathering, after first being warned by a law enforcement officer to disperse from the gathering because it exceeds the limitation for a gathering and having failed to disperse after a reasonable period of time not to exceed two minutes, is punishable as a Class 4 misdemeanor.

- b) *Injunctive relief.* The City, the City Council, and any City officer authorized by law, may seek to enjoin the continuing violation of any provision of this ordinance by bringing a proceeding for an injunction in any court of competent jurisdiction.

7. Duration

This ordinance is effective 12:00 a.m., October 14, 2020 and expires at 11:59 p.m. on December 13, 2020, unless amended by Council.

8. Effect of this Ordinance on the Powers of the Director of Emergency Management

This ordinance does not affect the powers of the City Manager, acting as the Director of Emergency Management, pursuant to Virginia Code § 44-146.21 during the COVID-19 disaster.

9. Severability

It is the intention of the City Council that any part of this ordinance is severable. If any part is declared unconstitutional or invalid by the valid judgment or decree of a court of competent jurisdiction, the unconstitutionality or invalidity does not affect any other part of this ordinance.

10. Emergency Ordinance; waiver of second reading

This is an Emergency Ordinance enacted pursuant to Virginia Code Section 15.2-1427 and shall take effect as set forth in Section 7 above. The second reading requirement set forth in Harrisonburg City Code Section 2-1-2 is waived.

ADOPTED AND APPROVED this ____ day of October, 2020.

MAYOR

ATTESTEE:

CITY CLERK