

SPECIAL RIVERBANK CITY COUNCIL AGENDA ITEM NO. 3.1

SECTION 3: BUSINESS

Meeting Date: July 16, 2020

Subject/ Title: Introduction by Title Only of Urgency Ordinance No. 2020-010 of the City Council of the City of Riverbank Requiring that All Businesses Within the City Must Require Every Person Entering the Business, and Continuing Until Their Departure, to Wear a Face Mask or Covering that Covers the Nose and Mouth.

From: Sean Scully, City Manager

Submitted by: Tom Hallinan, City Attorney

RECOMMENDATION

It is recommended that the City Council consider the proposed Urgency Ordinance No. 2020-010, reading by title only, waiving further reading, and adoption of an Urgency Ordinance of the City Council of the City of Riverbank requiring that all businesses within the City must require every person entering the business, and continuing until their departure, to wear a face mask or covering that covers the nose and mouth (the "Ordinance").

BACKGROUND / SUMMARY

COVID-19 is a global health crisis that endangers the public health and safety of the City of Riverbank (the "City") residents. On March 4, 2020, the Governor of the State of California ("Governor") declared a state of emergency in the State of California ("State") due to the number of confirmed cases of COVID-19 in the State, which state of emergency remains in effect. To coordinate the State's efforts to limit COVID-19 transmission, the Governor issued Executive Order N-25-20 ("EO-25") on March 11, 2020, in which he ordered that all residents of the State "heed any orders and guidance of state and local public health officials" with respect to COVID-19. The City declared a local emergency due to COVID-19, on March 16, 2020, which the City Council ratified on March 18, 2020.

On March 19, 2020, the Governor issued Executive Order N-33-20 ("EO-33"), ordering all State residents to "immediately heed the current State public health directives, which [he] ordered the Department of Public Health to develop for the current statewide status of COVID-19" as those directives are necessary to "preserve the public health and safety, and to ensure the healthcare delivery system is capable of serving all, and prioritizing those at highest risk and vulnerability." These Executive Orders provide that the State public health directives are mandatory and binding on all Californians.

On March 31, 2020, the Stanislaus County (“County”) Health Officer issued an order to implement EO-33. On April 1, 2020, the California Department of Public Health issued a Guidance (the “April 1 Guidance”) recommending that State residents wear face masks or coverings while leaving their residence to perform essential activities.

On April 14, 2020, the City Council passed Urgency Ordinance No. 2020-006, which adopted in the City the following: (1) the County Health Officer’s March 31, 2020 Order; (2) EO-33; and (3) any subsequent orders that the County Health Officer or any State official may issue to limit the spread of COVID-19, and ordered all individuals in the City to shelter at their place of residence.

On June 18, 2020, the California Public Health Officer issued a Guidance¹ (the “June 18 Guidance”), which supersedes the April 1 Guidance, and now requires all people in California to wear face coverings when in public in specific enumerated circumstances, with certain exceptions for individuals with certain disabilities, health conditions, or other risks, or individuals under two years of age, and this June 18 Guidance is fully binding on all people in California pursuant to EO-25 and EO-33, as recounted above.

DISCUSSION

Consistent with the State requirements, the Ordinance states that every business within the City shall require every person entering into the business, and continuing until their departure, to wear a face mask or covering that covers the nose and mouth, in accordance with the State guidelines applicable to the specific industry sector for that business, as set forth on the Industry Guidance webpage.

The “Industry Guidance” webpage is defined in the Ordinance as the State’s “Industry guidance to reduce risk” webpage, which the State maintains on its COVID-19 website, and which is updated on a regular basis to reflect the current directives from the State regarding protocols for containing the spread of COVID-19, which protocols are industry-specific and organized by industry sector. See, <https://covid19.ca.gov/industry-guidance/> (last updated on July 13, 2020.)

The Ordinance defines “Business” as “all businesses within the City of Riverbank that are subject to the State requirements regarding COVID-19, as set forth by industry sector on the Industry Guidance webpage.”

The Ordinance provides that the face mask or covering can be a fabric covering, such as a scarf or bandana. All reusable face masks or coverings should be washed frequently (at least daily). The Ordinance also discourages residents from wearing personal protective equipment, such as N-95 masks, for non-medical reasons.

¹ https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/Guidance-for-Face-Coverings_06-18-2020.pdf

(REVISED REPORT – PRESENTED, DISCUSSED, AND CONSIDERED DURING SPECIAL MEETING)

A violation of the Ordinance shall be considered an imminent threat to the public health and shall constitute a public nuisance in accordance with Title IX, General Regulations, of the Riverbank Municipal Code (“RMC”), Chapter 98, Nuisance Abatement. The City Manager may designate an enforcement officer who may issue administrative citations for violations of the Ordinance, pursuant to the procedures in Chapter 98 of the RMC.

For a first violation, the enforcement officer may issue a warning to the Business responsible for the violation, or issue an administrative citation with a two-hundred fifty dollar (\$250.00) fine. A second violation of this Ordinance may result in an administrative citation with a five hundred dollar (\$500.00) fine. A third, and all subsequent violations of this Ordinance may result in an administrative citation with a one thousand dollar (\$1000.00) fine.

Since the Ordinance is an urgency ordinance, Government Code section 36937 requires the City Council to adopt the Ordinance by a four-fifths (4/5) vote. If approved, the Ordinance takes effect immediately.

ALTERNATIVES

The City Council may choose to do any of the following:

- 1) Adopt the Ordinance;
- 2) Continue the item to a later meeting of the City Council and provide direction to staff for any changes; or
- 3) Reject the Ordinance.

ENVIRONMENTAL DETERMINATION

The California Environmental Quality Act requires environmental review only if a public agency action constitutes a “project.” (Pub. Res. Code § 21065.) The Ordinance is not a “project”, since it does not have the potential to cause a direct or reasonably foreseeable indirect physical change in the environment. (Cal. Code Regs., tit. 14, § 15064, subd. (d).)

FINANCIAL IMPACT

None.

ATTACHMENTS

Ordinance.

CITY OF RIVERBANK

ORDINANCE NO. 2020-010

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIVERBANK, CALIFORNIA, REQUIRING THAT ALL BUSINESSES WITHIN THE CITY MUST REQUIRE EVERY PERSON ENTERING THE BUSINESS, AND CONTINUING UNTIL THEIR DEPARTURE, TO WEAR A FACE MASK OR COVERING THAT COVERS THE NOSE AND MOUTH

WHEREAS, COVID-19 is a very serious public health threat with outcomes ranging from mild sickness to severe illness and death; and

WHEREAS, COVID-19 is easily transmittable and is rapidly spreading throughout the United States, the State of California (the “State”), the County of Stanislaus (the “County”) and the City of Riverbank (the “City”), presenting an immediate and significant risk to the health and safety of City residents, especially to the vulnerable population; and

WHEREAS, the health, safety and welfare of City residents remains the utmost importance to the City; and

WHEREAS, on March 4, 2020, the Governor declared a state of emergency in the State due to the number of confirmed cases of COVID-19 in the State, which state of emergency remains in effect; and

WHEREAS, on March 11, 2020, to limit the spread of COVID-19, the Governor issued Executive Order N-25-20, in which he ordered that all residents of the State “heed any orders and guidance of state and local public health officials”; and

WHEREAS, the City declared a local emergency due to COVID-19, on March 16, 2020, which was ratified by the City Council of the City of Riverbank (the “City Council”) on March 18, 2020; and

WHEREAS, on March 19, 2020, the Governor issued Executive Order N-33-20 ordering all State residents to “immediately heed the current State public health directives, which [he] ordered the Department of Public Health to develop for the current statewide status of COVID-19” as those directives are necessary to “preserve the public health and safety, and to ensure the healthcare delivery system is capable of serving all, and prioritizing those at highest risk and vulnerability”; and

WHEREAS, on March 31, 2020, the County Health Officer issued an order to implement Executive Order N-33-20; and

WHEREAS, on April 1, 2020, the California Department of Public Health issued a Guidance (the “April 1 Guidance”) recommending that State residents wear face masks or coverings while leaving their residence to perform essential activities; and

WHEREAS, on April 14, 2020, the City Council passed Urgency Ordinance No. 2020-006, which adopted in the City the following: (1) the County Health Officer’s March 31, 2020 Order; (2) the Governor’s Executive Order N-33-20; and (3) any subsequent orders that the County Health Officer or any State official may issue to limit the spread of COVID-19, and ordered all individuals in the City to shelter at their place of residence; and

WHEREAS, on June 18, 2020, the California Department of Public Health issued a Guidance¹ (the “June 18 Guidance”), which supersedes the April 1 Guidance and requires all people in the State to wear face coverings when in public in specific enumerated circumstances, with limited exceptions for individuals with certain disabilities, health conditions, or other risks, or individuals under two years of age, and this June 18 Guidance is fully binding on all people in California pursuant to the Governor’s Executive Orders N-25-20 and N-33-20; and

WHEREAS, the City has determined that the June 18 Guidance is best enforced within the City by requiring businesses in the City to establish and enforce their own guidelines to ensure that all individuals visiting these businesses or doing business with them will comply with the June 18 Guidance; and

WHEREAS, Government Code section 8634 authorizes, during a local emergency, the City Council, or officials designated thereby, to promulgate orders and regulations necessary to provide for the protection of life and property; and

WHEREAS, the City, pursuant to the police powers delegated to it by the California Constitution, has the authority to enact laws that promote the public health, safety and general welfare of its residents; and

WHEREAS, pursuant to Sections 36934 and 36937 of the California Government Code, the City may adopt an urgency ordinance if it is for the immediate preservation of the public peace, health or safety.

NOW, THEREFORE, the City Council of the City of Riverbank hereby ordains that:

SECTION 1. DEFINITIONS.

For purposes of this ordinance, the following words and phrases shall have the meanings respectively ascribed to them:

¹ See https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/Guidance-for-Face-Coverings_06-18-2020.pdf

“Industry Guidance” means the State’s “Industry guidance to reduce risk” on the State’s COVID-19 website, and which may change from time to time and is updated on a regular basis to reflect the current directives from the State regarding protocols for containing the spread of COVID-19, which protocols are industry-specific and organized by industry sector. See, <https://covid19.ca.gov/industry-guidance/> (last updated on July 13, 2020.)

“Business” means all businesses within the City of Riverbank that are subject to the State requirements regarding COVID-19, as set forth by industry sector on the Industry Guidance webpage.

SECTION 2. FACE COVERING REQUIRED.

Every Business within the City shall require every person entering into the Business, and continuing until their departure, to wear a face mask or covering that covers the nose and mouth, in accordance with the State guidelines applicable to the specific industry sector for that Business, as set forth on the Industry Guidance webpage.

A face mask or covering can be a fabric covering, such as a scarf or bandana. All reusable face masks or coverings should be washed frequently (at least daily). All residents are discouraged from wearing personal protective equipment, such as N-95 masks, for non-medical reasons.

SECTION 3. ENFORCEMENT.

A. The City Manager, or his or her designee, is authorized to enforce and ensure compliance with this Ordinance. The violation of any provision of this Ordinance constitutes an imminent threat to the public health and is hereby declared to be a public nuisance in accordance with Title IX, General Regulations, of the Riverbank Municipal Code (“RMC”), Chapter 98, Nuisance Abatement. It is unlawful to violate any of the provisions of this Ordinance, or to do any act prohibited by this Ordinance, or to omit or fail to do any act required by this Ordinance.

B. The purpose of this Section is to provide remedies to address acts or omissions set forth in this Ordinance. Violations may be corrected or addressed in a number of ways and it is the intent of this Ordinance to provide the City with an administrative process for correcting violations and to penalize violators for failure to comply with this Ordinance.

C. This Section provides for administrative citations which are in addition to all other legal and equitable remedies and provides an alternative to any criminal prosecutions which may be pursued by the City to address any violation of this Ordinance, or of any regulations adopted under the authority of the RMC.

D. Use of the remedies and procedures of this Section shall be at the sole discretion of the enforcement officer authorized to proceed under this Ordinance and shall not limit or preclude the use of criminal or civil injunctive code enforcement proceedings.

E. For purposes of this Section, the following words and phrases shall have the meanings respectively ascribed to them:

1. “Enforcement officer” means the City Manager or any City employee, or agent of the City, designated by the City Manager with the authority to enforce any provision of this Ordinance.

2. “Responsible party” means any Business or any owner or operator of a Business that violates any provision of this Ordinance.

F. Whenever an enforcement officer determines that a violation of any provision of this Ordinance has occurred, the enforcement officer, in his or her sole discretion, may issue a warning to any Business responsible for the violation. The warning shall serve as a written or verbal warning of responsibility. The warning requires immediate action by the responsible party for the violation to correct or cease the violation.

G. Whenever an enforcement officer charged with the enforcement of this Ordinance determines that a violation of this Ordinance has occurred, the enforcement officer shall have the authority to issue an administrative citation to the entity responsible for the violation pursuant to the procedures in RMC, Chapter 98, Nuisance Abatement; provided, that:

1. A first violation of this Ordinance may result in an administrative citation with a two hundred fifty dollar (\$250.00) fine;

2. A second violation of this Ordinance may result in an administrative citation with a five hundred dollar (\$500.00) fine; and

3. A third, and all subsequent violations of this Ordinance may result in an administrative citation with a one thousand dollar (\$1000.00) fine for each subsequent violation.

H. The remedies, fines, penalties and fees provided for under this Ordinance or in the RMC are cumulative and shall not restrict the City from any other remedy to which it is entitled under law or equity. Nothing in this Ordinance shall be deemed to preclude the imposition of any criminal penalty under State law or this Ordinance, nor shall anything in this Ordinance be deemed to conflict with any penalty or provision under State law, or to prohibit any conduct authorized by the California and United States Constitution. This Ordinance shall not be interpreted in any manner that conflicts with the laws or Constitutions of the United States or California.

I. Notwithstanding any other provision of this Ordinance, whenever the enforcement officer determines real property or any building, structure or condition thereon is dangerous or constitutes an immediate threat to life, public health or safety, the enforcement officer may immediately and forthwith abate such public nuisance. Actions taken to abate immediately or potentially dangerous nuisances may include, but are not limited to, removal of the condition creating the danger and/or the restriction from use or occupancy of the property on which the condition exists, or any other abatement action determined by the enforcement official to be necessary. Notice of the emergency abatement shall be provided to the owner and/or responsible party as provided for in this Ordinance the same day or as soon as practical.

SECTION 4. TERM. This Ordinance remains in full force and effect until the Governor ends the state of emergency in response to the COVID-19 outbreak or until the Ordinance is rescinded by the City Council, whichever occurs first.

SECTION 5. SEVERABILITY. If any section, subdivision, sentence, clause, phrase or portion of this Ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof and shall continue to be in full force and effect.

SECTION 6. URGENCY FINDING. The City hereby finds, determines and declares that this Ordinance is necessary to the immediate preservation of the public peace, health and safety, because there is an urgent need to slow virus transmission as much as possible to protect the most vulnerable and to prevent the health care system from being overwhelmed. Therefore, the City further finds, determines, and declares that this Ordinance takes effect immediately upon adoption pursuant to the authority conferred upon the City Council by California Government Code section 36937.

The foregoing Ordinance was introduced, adopted, approved, and ordered published in full by a four-fifths vote at a meeting of the City Council of the City of Riverbank held on the ____ day of July 2020, and said Ordinance was thereupon adopted by the following roll call vote.

PASSED AND ADOPTED by the City Council of the City of Riverbank at a regular meeting held on the ____ day of _____, 2020; motioned by Councilmember _____, seconded by Councilmember _____, and upon roll call was carried by the following City Council vote of _____ :

- AYES:**
- NAYS:**
- ABSENT:**
- ABSTAINED:**

ATTEST:

APPROVED:

Annabelle H. Aguilar, CMC
City Clerk

Richard D. O'Brien
Mayor

CONSIDERED