

RECORD OF ORDINANCES

CITY OF UPPER ARLINGTON
STATE OF OHIO

ORDINANCE NO. 46-2020

TO AMEND SECTION 501.14 GENERAL DEFINITIONS AND AMEND CHAPTER 547 MISCELLANEOUS OFFENSES TO ENACT SECTION 547.04 - REQUIRING FACIAL COVERINGS IN ANY INDOOR AND OUTDOOR PUBLIC SPACE TO LIMIT THE SPREAD OF COVID-19, AND DECLARING AN EMERGENCY

- WHEREAS,** COVID-19 is a respiratory disease that can result in serious illness or death and can be easily spread from person to person; and
- WHEREAS,** COVID-19 endangers the lives of the residents of the City of Upper Arlington, creating an emergency to life and public safety and disrupting commerce; and
- WHEREAS,** the World Health Organization declared COVID-19 a Public Health Emergency of International Concern on January 30, 2020; and
- WHEREAS,** on March 12, 2020 the City Manager declared a state of emergency due to the COVID-19 pandemic; and
- WHEREAS,** on March 22, 2020, under the direction of Ohio Governor Mike DeWine, Ohio Department of Health Director Amy Acton, M.D, issued an order requiring all Ohioans to stay in their homes to prevent the further spread of COVID-19 until April 6, 2020 and the order was extended until May 1, 2020 and has been since amended on April 30, May 20 and May 22, 2020 to allow businesses to open with the requirement for employees to wear facial coverings but customers were not required to wear facial coverings; and
- WHEREAS,** additional measures are deemed necessary, above and beyond those instituted by the State and Federal governments, in order to help slow the outbreak of COVID-19; and
- WHEREAS,** health authorities, including the CDC, the Surgeon General of the United States, and Ohio Department of Health have

recommended the use of face coverings as a means of preventing the spread of COVID-19; and

WHEREAS, nothing contained in this ordinance is intended to infringe upon an individual's First Amendment rights; and

WHEREAS, nothing contained in this ordinance is intended to infringe upon an individual's rights under the Americans with Disability Act and its associated requirements; and

WHEREAS, on July 8, 2020, the Ohio Director of Health issued a state facial covering order that applies to the City of Upper Arlington and requires Ordinance No. 46-2020 to be reconsidered and amended to be consistent with that order;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Upper Arlington, Ohio:

SECTION 1. That Council hereby waives the requirement of Section 731.19 of the Ohio Revised Code that this Ordinance contain the entire section of the Chapter that is being amended.

SECTION 2. That the following definition~~s~~ be added to Section 501.14 General Definitions:

Facial Covering: means either (a) a piece of cloth, fabric, or other permeable material without holes that fully covers the mouth and nose and that, unless it is a full-face covering or a neck gaiter, is secured with ear straps or otherwise tied so as to prevent slipping, or (b) a face shield that covers the mouth, nose and chin. A Facial Covering may be factory-made or may be handmade and improvised from household materials. Facial Coverings include, but are not limited to, bandanas, scarfs, medical masks, and cloth masks; and also include respirators, N95 masks or other personal protective equipment that provides a higher level of protection than a Facial Covering defined in this Section. A Facial Covering shall be worn so as to cover the mouth and nose in compliance with the Centers for Disease Control and Prevention (CDC) guidance on wearing facial coverings.

Businesses: For purposes of section 547.04, "Businesses" shall include any for-profit entity, non-profit entity, club, daycare,(educational entity, or governmental entity (other than federal) regardless of the nature of the service, the function it performs,

or its corporate or entity structure, including memberships or participation agreements.

Indoor locations: For purposes of section 547.04, “indoor locations” shall include but are not limited to any indoor spaces, whether publicly owned or privately owned, where the public has access by right, membership or invitation, express or implied, whether by payment of money or not. Indoor locations include, but are not limited to, building lobbies or common spaces, elevators, and buildings or meeting rooms.

SECTION 3. That Chapter 547 is hereby amended to include the following provisions:

547.04 Facial Covering Required.

A. All persons in Upper Arlington shall wear a Facial Covering at all times in indoor locations (including, but not limited to, Businesses) that are not a residence (except home offices when a member of the public is present for business purposes) and outdoor locations where the persons are not able to maintain a distance of six feet or more from individuals who are not members of their household; or while waiting for, riding, driving or operating public transportation, a taxi, a private car service, or ride sharing vehicle. This does not apply to vehicles engaged in direct travel through Upper Arlington that do not stop in the city. ~~areas of commercial entities or other building or indoor space open to the public; provided, however, that This requirement does not apply to the following:~~

1. any person younger than ~~ten (10)~~ ~~five (5)~~ years of age;
2. any person who is a child whose parent, guardian or other responsible person has been unable to place the Facial Covering safely on the child's face;
3. any person with a medical condition or disability that prevents wearing a Facial Covering (including, but not limited to, any person who has trouble breathing, or is unconscious or incapacitated, or is otherwise unable to put on or remove the Facial Covering without assistance);
4. any person who is hearing-impaired and uses facial and mouth movements as a means of communication, or is seeking to communicate with someone who is hearing-impaired in a way that requires the mouth to be visible;

5. any person while the person is consuming food or drink;
6. any person while the person is ~~engaged in~~ exercising in a gym or indoor exercising facility so long as six or more feet of separation between the individuals exists;
7. any person obtaining a service that requires temporary removal of the Facial Covering for security surveillance, screening, or a need for specific access to the face, such as while visiting a bank or while obtaining a personal-care service involving the face or head, but only to the extent necessary for the temporary removal;
8. any person who is ~~an officiant of a actively providing or obtaining access to~~ religious service worship, but wearing a Facial Covering is strongly encouraged;
9. ~~any person whose religious beliefs prevent him or her from wearing a Facial Covering;~~
9. 10. any person who is present in a school building or facility that is subject to a comparable facial covering requirement. "School" shall include school districts, public, private, or charter school or institution that provides education for any or all of the following grades or education: kindergarten through twelfth grade; or a university, college, or similar post-secondary institution;
10. ~~11.~~ any person while the person is giving a speech for a broadcast or to an audience ~~or other vocal performance provided six or more feet of separation between individuals exists or other persons present not engaged in performing~~ have facial coverings;
11. ~~12.~~ any person for whom Facial Coverings are prohibited by law or regulation or are inconsistent with ~~documented~~ industry standards while the person is on duty;
12. ~~13.~~ any person who is complying with directions of law enforcement officers;

13. ~~14. any person who is alone in an enclosed space, such as an office, and which space is not intended for use or access by the public private, individual office;~~
14. ~~15. any person participating in athletic practice, scrimmage, or competition that is permitted under a separate Ohio Department of Health order;~~
15. ~~16. any person actively engaged in a public safety capacity, including but not limited to law enforcement, firefighters or emergency medical personnel;~~
16. ~~17. locations where facial coverings are prohibited by law or regulation;~~
17. ~~18. locations where facial coverings are in violation of documented industry standards; and~~
18. ~~19. locations where facial coverings are in violation of documented safety policies.~~
19. ~~any person who is present in a public library building or facility that is subject to a comparable facial covering requirement.~~

B. Penalty: Whoever violates Section 547.04 is guilty of a minor misdemeanor, punishable by fine up to one hundred fifty dollars (\$150.00). The violator shall be given a warning on the first offense. If the violator has previously been given a warning for a violation of this Section, the violator shall be subject to the penalties for a minor misdemeanor.

SECTION 4. Open Meeting. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements including Ohio Revised Code Section 121.22.

SECTION 5. Severability. If any subsection, sentence, clause, phrase, or word of this Ordinance or any application of it to any person, structure, gathering, or circumstance is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, then such decision will not affect the validity of the remaining portions or applications of this Ordinance.

SECTION 6.

Emergency Measure. This Ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health and safety of the City and its inhabitants, and must be immediately effective in order to address the increased spread of the COVID-19 pandemic. Wherefore, this Ordinance shall take effect and be in force from and immediately after its adoption. This Ordinance shall remain in force until Council by motion determines shall-determine—that the spread of COVID-19 is ~~is~~ no longer a public health emergency and/or the requirement of a Facial Covering is no longer necessary or the State of Emergency declared by the Governor no longer exists.