

ORDINANCE NO. 09 -2020

**BOROUGH OF WEST CHESTER**

**CHESTER COUNTY, PENNSYLVANIA**

**AN EMERGENCY ORDINANCE OF THE BOROUGH OF WEST CHESTER, CHESTER COUNTY, PENNSYLVANIA, ADOPTED BY THE BOROUGH COUNCIL OF THE BOROUGH OF WEST CHESTER PURSUANT TO AUTHORITY IN SECTION 302.I OF THE BOROUGH OF WEST CHESTER HOME RULE CHARTER TO ESTABLISH LIMITATIONS ON THE NUMBER OF PEOPLE WHO MAY GATHER INSIDE AND OUTSIDE OF PRIVATE DWELLINGS AND TO REQUIRE THE WEARING OF FACE COVERINGS IN THE BOROUGH OF WEST CHESTER.**

WHEREAS, on March 11, 2020, the World Health Organization and the Centers for Disease Control and Prevention ("CDC") declared COVID-19 a "public health emergency of international concern" and a "pandemic"; and

WHEREAS, on March 13, 2020, President Donald Trump declared a national emergency as a result of COVID- 19; and

WHEREAS, on March 6, 2020, Governor Thomas Wolf signed a Proclamation of Disaster Emergency noting that the possible increased threat from COVID-19 constitutes a threat of imminent disaster to the health of the citizens of the Commonwealth such that it was necessary to implement measures to mitigate the spread of COVID-19; and

WHEREAS, on August 31, 2020, Governor Wolf renewed his Proclamation of Disaster Emergency for 90 days stating that the COVID-19 pandemic continues to be of such magnitude and severity that emergency action is necessary to protect the health, safety and welfare of the citizens of the Commonwealth of Pennsylvania; and

WHEREAS, the CDC has indicated that COVID-19 is primarily spread from person to person and being in close contact with an infected person or gathering in large groups may increase the likelihood of infection; and

WHEREAS, the CDC has warned that the key to slowing the spread of COVID-19 is to limit close contact with other people as much as possible; and

WHEREAS, the CDC has indicated that the higher level of community transmission in the area where a gathering is being held, the higher the risk of spreading COVID-19; and

WHEREAS, the CDC warns that the more people that an individual interacts with at a gathering, the higher the potential risk of becoming infected with COVID-19 and increasing the spread of the disease; and

WHEREAS, the CDC recognizes that because the spread of COVID-19 varies in different communities, the restrictions that are put in place in an effort to slow the infection rate and spread of the disease must meet the unique circumstances and conditions of each community; and

WHEREAS, the CDC has indicated that universal use of face coverings in communities will help slow and stop the spread of COVID-19; and

WHEREAS, the Chester County Department of Health (“CCDH”) indicates that reported positive cases of COVID-19 have continued to rise in the Borough of West Chester and that the number of positive cases has more than doubled between August of 2020 and September of 2020 (from 202 total positive cases in August to 437 total positive cases in September); and

WHEREAS, the CCDH reports that for a four-week period, beginning on September 22, 2020 and ending October 19, 2020, the rate of COVID-19 cases per 100,000 people in the Borough of West Chester is more than double the rate per 100,000 cases in all municipalities in Chester County; and

WHEREAS, the CCDH reports that the incidence of COVID-19 cases in the Borough over the four-week period, beginning on September 22, 2020 and ending October 19, 2020, exceeds 80 cases per 100,000 and thus is classified as “very high” and

WHEREAS, despite the serious health emergency posed by the COVID-19 pandemic, Borough residents have been observed participating in social gatherings at private residences in large numbers and without wearing face coverings; and

WHEREAS, pursuant to the authority in Section 401.I of the Borough of West Chester Home Rule Charter (the “Charter”), Mayor Dianne T. Herrin issued an Emergency Declaration (the “Emergency Declaration”) on October 2, 2020, in order to limit the number of people who may gather in private residences and to require the wearing of face coverings in the Borough in an effort to slow and stop the spread of COVID-19; and

WHEREAS, on October 13, 2020, the Mayor amended the Emergency Declaration to allow gatherings of no more than 25 people at a private residence upon the Mayor’s approval of a social gathering special event request subject to the requestor agreeing to adhere to safety protocols intended to limit the spread of COVID-19; and

WHEREAS, pursuant to the powers in Section 302.I of the Borough Charter, Borough Council of the Borough of West Chester ("Council") desires to protect the public health, safety and welfare of residents of the Borough by adopting this emergency ordinance to impose emergency management measures to reduce the potential spread of COVID-19 within the Borough; and

WHEREAS, as a Home Rule Municipality, the Borough of West Chester may exercise any power and function not denied it by the Constitution of the United States of America, by the Constitution of the Commonwealth of Pennsylvania, by the General Assembly of the Commonwealth, or by the Borough's Home Charter; and

WHEREAS, pursuant to the Charter, the Council may exercise all legislative powers of the Borough and adopt such ordinances and regulations as may be required from time to time to protect the health, safety and welfare of Borough citizens; and

WHEREAS, pursuant to Section 302.I of the Charter, to meet a public emergency affecting life, health and public safety, Council intends to adopt this emergency ordinance at the meeting at which the ordinance is first introduced; and

WHEREAS, Council respects the fundamental constitutional guarantees of equal protection of the law and freedom of association and assembly and recognizes that restrictions on such freedoms must be narrowly tailored so that one's right to associate and assemble is not curtailed beyond the point at which it is essential to further the Borough's interest in public health, safety and welfare.

NOW THEREFORE, BE IT ENACTED AND ORDAINED, and it hereby enacted by authority of the Council of the Borough of West Chester, that Council finds that COVID-19 and the reported increase in the number of positive COVID-19 cases in the Borough from the time period beginning September 22, 2020 and ending October 19, 2020 and the threat of death, serious illness and sickness resulting from COVID-19 in the Borough constitutes an emergency and justifies the following emergency regulations to be in effect immediately upon adoption of this Ordinance.

**SECTION 1. Definitions.** The following words and terms shall, for the purposes of this ordinance, have the meanings shown herein:

**Business-** all commercial, retail, wholesale, professional, and service establishments whether for profit or not for profit located in the Borough of West Chester.

**Face covering-** a clean cloth, fabric, or other soft or permeable material, without holes or vents, that covers both the mouth and nose, including surgical masks, respirators, face

shields, handmade or homemade masks, and bandanas, neck gaiters, scarves or wraps made of tightly woven fabric such as denim or cotton.

**Gathering-** a planned or spontaneous event or function of a group of persons assembled, indoors or outdoors.

**Household-** all persons living in the same dwelling unit.

**In contact-** coming within 6 feet or closer.

## **SECTION 2. Face Coverings Required.**

- A. All individuals in the Borough of West Chester over the age of 2 shall be required to wear a face covering when within 6 feet of another individual and under the following conditions:
  - 1. Inside any building open to the public, including, but not limited to, grocery stores, pharmacies, businesses, retail stores, service establishments, and medical and dental treatment facilities.
  - 2. Inside all municipal and other governmental buildings.
  - 3. On a transport or transit vehicle, including ride share and public transportation.
  - 4. Waiting to enter any building open to the public, any municipal and other governmental building, or waiting to board any transport or transit vehicle, unless a distance of at least 6 feet is maintained from any person who is not that person's family or household member.
  - 5. Coming into contact with any person who is not that person's family or household member, whether indoors or outdoors, including, but not limited to, contact during gatherings, curbside pickup, drive-through and food truck purchases, deliveries, and service calls.
  - 6. Working in all jobs that entail coming into contact with any member of the public including, but not limited to, all work involving the preparation or packaging of food and/or beverages unless separated by a physical barrier between the employee and the public.
- B. Parents or guardians are responsible for ensuring that minor children wear face coverings unless such children are exempt as set forth herein under Section 2(C) below.
- C. Individuals in the Borough of West Chester who meet the following conditions are exempt from wearing face coverings pursuant to Section 2(A):
  - 1. Those individuals with a medical condition, mental health condition, or disability that prevents wearing of a face covering; provided, however, the individual must provide documentation from a licensed medical professional of such medical, mental health, or disability preventing the wearing of a face

covering. If the individual provides said documentation immediately, or within 5 days, a citation shall be not be issued.

2. Those individuals whose religious beliefs prevent them from wearing a face covering.
3. Those individuals who are hearing impaired, or who are communicating with a person who is hearing impaired, where the ability to see the mouth is essential for communication.
4. Those individuals for whom wearing a face covering would create a risk to the person related to their work, as determined by local, state, or federal regulators or workplace safety guidelines.
5. Those individuals who are obtaining a service or treatment involving the nose or face or a medical procedure for which temporary removal of the face covering is necessary to perform the service.
6. Those individuals seated at a restaurant or other establishment that offers food or beverage service, provided the establishment complies with the most current requirements established by the PA Department of Health and the Governor of Pennsylvania.

D. The wearing of face coverings may be advisable, but is not required:

1. In private vehicles and private homes
2. In private business locations, or in individual private offices, at times when members of the public, clients, customers, guests, or other invitees are not present, as long as there is a distance of at least 6 feet maintained.
3. While participating in recreational physical activities, whether outdoor or indoor, when involving 10 people or fewer.
4. While with family members and/or members of the same household.
5. At election polling places.

### **SECTION 3. Limitations on Gathering Size in Housing.**

Gatherings of persons that are not from the same household shall be limited as follows:

- A. In all housing types, gatherings of more than 15 people in any one dwelling unit, both indoors and outdoors, shall be prohibited.
- B. When the number of members living in a household exceeds 15, no additional persons shall gather at the property, either indoors or outdoors.
- C. The provisions of this section limiting the size of gatherings applies to residential properties only and does not apply to nonresidential properties or gatherings at private businesses, public and private schools, religious functions, and events such as weddings, funerals, or protest demonstrations.

**SECTION 4. Violations and Penalties.**

Any person who violates the provisions of this ordinance shall be found guilty of a summary offense punishable by a fine of not more than three hundred dollars (\$300.00).

**SECTION 5. Severability.** If any sentence, clause, section or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts hereof. It is hereby declared as the intent of the Council of the Borough of West Chester that this Ordinance would have been adopted had such unconstitutional, illegal, or invalid sentence, clause, section, or part thereof not been included therein.

**SECTION 6. Repealer.** All Ordinances or parts of Ordinances conflicting with any provisions of this Ordinance are hereby repealed insofar as the same affects this Ordinance.

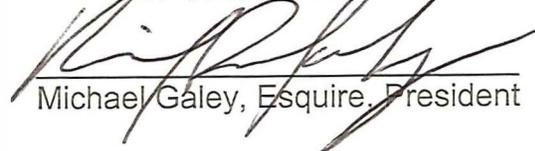
**SECTION 7. Effective Date.** This Ordinance shall become effective immediately upon enactment and shall expire on the 61<sup>st</sup> day after enactment as provided by Section 302.I of the Charter.

ENACTED AND ORDAINED THIS 21st DAY OF OCTOBER, 2020.

ATTEST:

  
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Michael A. Perrone, Secretary

**COUNCIL FOR THE BOROUGH OF  
OF WEST CHESTER**

By:   
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Michael Galey, Esquire, President

APPROVED THIS 21ST DAY OF OCTOBER, 2020.

  
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Dianne T. Herrin, Mayor