



**CITY OF MIDDLETOWN
COMMON COUNCIL
SPECIAL MEETING
AGENDA
November 19, 2020
4:00pm**

1. PLEDGE OF ALLEGIANCE
2. SPECIAL MEETING NOTICE (COUNCIL CLERK)
3. ROLL CALL (COUNCIL CLERK)
4. NEW BUSINESS
 - Resolution to add to the Code of the City of Middletown a new Chapter 215, entitled "COVID-19 Enforcement.
5. ADJOURNMENT

**CITY OF MIDDLETOWN, NEW YORK
COMMON COUNCIL
RECORD OF VOTE**

THE FOLLOWING WAS PRESENTED

By Ald. _____

Sec'd by Ald. _____

Date of Adoption 11-19-20

Index No: _____

NAMES	AYES	NOES	ABSTAIN	ABSENT
Ald. Ramkissoon				
Ald. Tobin				
Ald. Kleiner				
Ald. Johnson				
Ald. Jean-Francois				
Ald. Burr				
Ald. Green				
Ald. Masi				
Pres. Rodrigues				
TOTAL				

WHEREAS, in February 2020, the Center for Diseases Control and Prevention ("CDC") confirmed the first case in the United States of a new respiratory disease called the novel coronavirus (COVID-19). COVID-19 is caused by a virus (SARS-CoV-2) that is part of a large family of viruses called corona viruses. COVID-19 spread rapidly in New York. COVID-19 poses serious health risks to persons infected with the disease, particularly those with underlying medical conditions and the elderly. New York State first identified cases within its borders on March 1, 2020. It is therefore essential that the spread of the virus be slowed to safeguard public health, safety, and welfare, and

WHEREAS, the virus that causes COVID-19 is readily transmitted via respiratory droplet contact, especially in group settings. Droplet transmission can be reduced with the use of personal protective barriers such as face masks. The CDC and other public health agencies have uniformly recommended that the general public wear cloth face coverings and that individuals not residing within the same household maintain at least six feet of social distance from one another to prevent the spread of COVID-19 by droplet transmission, and

WHEREAS, on April 15, 2020, Governor Cuomo issued Executive Order 202.17 requiring any individual who is over the age of two and able to medically tolerate a face-

covering to cover the nose and mouth with a mask or cloth face-covering when in a public place and unable to maintain, or when not maintaining social distance, and

WHEREAS, on May 28, 2020, the Governor issued Executive Order 202.34 which authorized business operators and building owners to deny admittance to individuals who fail to comply with the Governor's face mask mandate set forth in Executive Order 202.17 or to require or remove individuals from the premises if such individual fails to wear a face mask as required. Nothing in Executive Order 202.34 or any other Executive Order prohibits or limits the right of State and local enforcement authorities from imposing fines or other penalties for violations of the directive in Executive Order 202.17, and

WHEREAS, the New York State Department of Health has issued Industry Guidance During the COVID-19 public health emergency for a variety of activities, industries and businesses which sets forth physical distancing requirements to minimize the spread of droplets and airborne contaminants, including generally mandating a distance of six feet between individuals, and when not able to do so, the wearing of acceptable face covering, and

WHEREAS, the Governor has issued multiple Executive Orders limiting the gatherings of individuals, whether it is on public or private property. Gatherings that do not exceed the Governor's limitations may occur so long as appropriate social distancing and face covering requirements are adhered to, and

WHEREAS, Governor Cuomo has stated that local governments have a responsibility to enforce social distancing, mask-wearing requirements and business closures and limitations. The Governor has warned local governments across New York State that if local officials do not enforce compliance with COVID19 public health orders, areas will be closed again. The Governor has stated that he will reverse openings in areas that are not complying with the rules and in those areas where local governments are not enforcing the law, and

WHEREAS, the City of Middletown has a population of approximately 28,000 residents, and approximately 1,512 City residents have been diagnosed positively for COVID-19 infection, and

WHEREAS, the Mayor of the City of Middletown has issued various Proclamations of Local States of Emergency due to the threats posed by COVID-19, and

WHEREAS, the Mayor's most recent Proclamation requires the use of face masks or face coverings within the City of Middletown, and

WHEREAS, while voluntary compliance with the aforementioned health and safety precautions on public and private property is preferred, the Common Council of the City of Middletown has determined that the grave health risks and economic impacts associated with COVID-19 require enforcement mechanisms to protect the public health, safety and welfare of City residents.

NOW, THEREFORE, Be it Resolved and Ordained by the Common Council of the City of Middletown:

Section 1. There is to be added to the Code of the City of Middletown a new Chapter 215, entitled "COVID-19 Enforcement" to read in its entirety as follows:

CHAPTER 215. COVID-19 ENFORCEMENT.

Section 215-1 Purpose of this Chapter.

The purpose of this Chapter 215 is to require the use of face masks or face coverings in the City of Middletown to prevent the spread of COVID-19 and is being enacted pursuant to the authority contained in Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York, Part 66 "Immunizations and Communicable Diseases", Subpart 66-3, entitled "COVID-19 Emergency Regulations effective July 9, 2020, and pursuant to the authority contained in the various emergency proclamations of the Governor of the State of New York and the Mayor of the City of Middletown.

Section 215-2. Definitions.

Face Masks and Face Coverings: Masks and face coverings include, but are not limited to, cloth (e.g.. homemade, sewn, quick cut, bandana), surgical masks, KN95, N-95 respirators, and face shields, any one of which must cover the nose and mouth of the wearer.

Section 215-3. Face mask or face covering required.

A. In the City of Middletown all persons in or upon public property must wear a face mask or face covering, which must be worn covering the nose and mouth of the wearer, at all times when the wearer is unable to maintain a distance of six feet of another person or persons unless such person is part of a household unit.

B. All persons must wear a face mask or face covering which must be worn covering the nose and mouth of the wearer at all times when on private

property located in the City of Middletown, including but not limited to public areas of residential property, business and professional offices, retail and personal service establishments, restaurants, child care facilities, places of public accommodation, private clubs and religious establishments, when unable to maintain a distance of six feet from another person who is not a member of the same household.

C. Owners of businesses located in the City of Middletown must ensure compliance by customers or visitors on business premises with the provisions of this Section.

Section 215-4. Exceptions.

A. Face masks or face coverings shall not be required to be worn if individuals maintain a distance of at least six feet from another person. Individuals who reside in the same household are not required to wear a face mask or face covering when located within six feet of each other.

B. Face masks or face coverings shall not be required to be worn by any child under the age of six or by anyone who is unable to medically tolerate a face covering as determined by a New York licensed physician or mid-level provider, however, this provision shall not exempt any person from maintaining a distance of at least six feet from another person, except for a child under six or when such person is with a guardian who is not a member of the household.

C. Drivers traveling alone or exclusively with members of their households in or upon a motor vehicle do not need to wear face coverings when traveling in or upon said vehicles. Individuals who are riding bicycles, scooters, or are jogging are exempt if in the roadway and not upon the sidewalk.

D. Persons playing a sport or participating in a fitness class or recreational activity are not required to wear a face mask if such individuals are unable to tolerate a face covering for the physical activity. Persons must put a face mask or face covering on as soon as such physical activity has ended.

E. Individuals are not required to wear a face mask or face covering when they are stationary, seated or standing while actively eating and/or drinking, or while seated within a City restaurant's approved eating area.

F. Police officers, fire fighters, ambulance personnel and other first responders shall not be required to wear a face mask or face covering when not practical because they are engaged in a public safety matter of an emergency nature.

Section 215-5. Enforcement; penalties for offenses.

A. This Chapter may only be enforced during the time that a Declaration of Emergency is issued by the New York State Governor or City of Middletown Mayor due to an epidemic or disease outbreak that is communicable through droplet contact or airborne transmission.

B. Any person who violates any provisions of this Chapter shall, upon conviction thereof, be subject to a fine of not less than \$100 nor more than \$500 or by imprisonment for a period not exceeding 15 days, or by both such fine and imprisonment.

Section 2. Severability.

The provisions of this Ordinance are separable and if any provision, clause, sentence, subsection, word or part thereof is held illegal, invalid or unconstitutional, or inapplicable to any person or circumstance, such illegality, invalidity or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, subsections, words or parts of this ordinance or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this ordinance would have been adopted if such illegal, invalid or unconstitutional provision, clause, sentence, subsection, word or part had not been included therein, and if such person or circumstance to which this ordinance or part hereof is held inapplicable had been specifically exempt therefrom.

Section 3. Effective date.

This Ordinance shall take effect immediately