

**CITY OF CARMEL-BY-THE-SEA
CITY COUNCIL**

**URGENCY ORDINANCE NO. ~~2022-~~
~~006~~2023-002**

URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA RESCINDING URGENCY ORDINANCE NO. 2022-006 AND ADOPTING RULES OF CONDUCT FOR ATTENDING MEETINGS OF LEGISLATIVE BODIES AT CITY FACILITIES

WHEREAS, the City of Carmel-by-the-Sea ("City") is authorized by Article XI, Section 7 of the California Constitution to make and enforce all regulations and ordinances using its police powers; and

WHEREAS, the California Emergency Services Act (California Government Code Section 8550, et. seq.) defines a local emergency as "the existence of conditions of disaster or of extreme peril to the safety of persons and property within the territorial limits of a city, caused by conditions such as an epidemic, [emphasis added] which are or are likely to be beyond the control of the services, personnel, equipment, and facilities of a city, and require the combined forces of other political subdivisions to combat"; and

WHEREAS, Section 2.64.020 of the City Municipal Code defines "emergency" as the "actual or threatened existence of conditions of disaster or of extreme peril to the safety of persons and property within this City caused by such conditions as air pollution, fire, flood, storm, epidemic, [emphasis added] riot, earthquake, or other conditions, including conditions resulting from war or imminent threat of war, but other than conditions resulting from a labor controversy, which conditions are or are likely to be beyond the control of the services, personnel, equipment, and facilities of this City, requiring the combined forces of other political subdivisions to combat"; and

WHEREAS, Government Code section 37359 allows cities to "limit the access or use [of city-owned property] in area or time or in any reasonable manner deemed necessary" and enforce such limitations through trespass law; and

WHEREAS, in December 2019, reports began spreading worldwide about a flu-like virus first found in China that was significantly more deadly than the flu generally, with the virus becoming known as the Coronavirus ("COVID-19"); and

WHEREAS, the federal Centers for Disease Control and Prevention ("CDC") has confirmed thousands of cases of individuals who have severe respiratory illness caused by COVID-19, as well as deaths caused by this illness; and

WHEREAS, on or about March 4, 2020, as part of the State of California's response to address the global COVID-19 outbreak, Governor Gavin Newsom declared a State of Emergency to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and help the state prepare for broader spread of COVID-19; and

WHEREAS, on March 6, 2020, the County Administrative Officer of Monterey County proclaimed a Local Emergency due to the threat of COVID-19 in the County; and

WHEREAS, on March 11, 2020, the World Health Organization (“WHO”) classified the spread of COVID-19 internationally as a global pandemic; and

WHEREAS, on March 12, 2020, the City Administrator of the City of Carmel-by-the-Sea, acting in his capacity as the Director of Emergency Services for the City, declared the existence of a local emergency within the City due to COVID-19; and

WHEREAS, on March 13, 2020, the City Council adopted Resolution 2020-021 ratifying the City Administrator’s Proclamation of the Existence of a Local Emergency Due to the Worldwide Spread of the Coronavirus (“COVID-19”); and

WHEREAS, the COVID-19 pandemic, including its variants, continues to present an immediate and significant risk to public health and safety, and resulting in serious illness or death to vulnerable populations, especially the elderly and those with underlying health conditions; and

WHEREAS, City Municipal Code Section 1.16.010 provides that every person convicted of a violation of any provision of the Municipal Code may be punished as a misdemeanor with a fine not exceeding \$1000 and/or imprisonment for a term not exceeding six month or punished as an infraction with a fine up to \$100.00 for each violation, \$200.00 for second violation within one year and \$500.00 for a third and any subsequent violation within one year; and

WHEREAS, in the absence of actions to mitigate the spread of COVID-19, County wide health services may become overwhelmed and unable to keep up with medical demand for care and availability of hospital or care facility capacity; and

WHEREAS, in order to mitigate the spread of COVID-19, it is necessary for the immediate preservation of the public peace, health and safety to adopt rules of conduct at City facilities; and

WHEREAS, the City desires to further combat COVID-19 by establishing safe protocols for conduct within city-owned facilities, ~~including requiring persons wear a face covering at all times covering the mouth and nose, before entry or remaining within city-owned facilities; and; and~~

WHEREAS, the City further desires to identify certain city-owned facilities as limited public forums opened to the public for the limited purpose of conducting city business, that this policy for conduct is intended to prevent disruptive conduct that prevents the efficient processing of city business by establishing reasonable time, place, and manner requirements for persons wishing to enter or use such city-owned facilities, and that this policy is not intended to limit rights protected by the First Amendment; and

WHEREAS, based upon the foregoing, the City Council finds pursuant to Government Code Section 36937 (b) that this to Urgency Ordinance is necessary for the immediate preservation of the public peace, health and safety; and

WHEREAS, the City Council has considered all information related to this matter, as presented at the public meetings of the City Council identified herein, including any supporting reports by City staff, and any information provided during public meetings; and

WHEREAS, the City Council adopted Urgency Ordinance 2022-001 on February 28, 2022 with Rules of Conduct at City Facilities; and

WHEREAS, the Council adopted Urgency Ordinance 2022-002 on April 4, 2022 amending Section of 7 of Urgency Ordinance 2022-001 with Rules of Conduct for attendance at meeting of Legislative Bodies; and

WHEREAS, Since the adoption of Urgency Ordinance 2022-002, the Monterey County Health Department has deferred their guidance on masking to the California Department of Public Health (“CDPH”) recommendations; and

WHEREAS, As of September 23, 2022, the CDPH shifted from a “strong recommendation” for the general population to mask in all indoor settings at all times, to using the CDC Community Levels to help inform masking recommendations: Website: <https://www.cdc.gov/coronavirus/2019-ncov/your-health/covid-by-county.html>; and

WHEREAS, CDC Community Levels – are updated weekly on Thursday, and are determined by hospital based metric data (COVID-19 hospital admissions, % inpatient beds occupied with COVID-19, new cases per 100,000 population), and are intended to “provide a broad framework for jurisdictions to use and adapt...based on local needs”; and

WHEREAS, the three CDC Community Levels may be summarized as follows:

Low – recommendations focus on best practices for prevention and control, vaccinations

Medium – strengthens emphasis on protecting people are immunocompromised, enhanced prevention measures for high-risk settings

High – focus on wearing masks indoors in public and providing added protection to populations at high risk

~~WHEREAS, the Monterey County COVID-19 Community Level as of October 3, 2022 was “Low”; and~~

~~WHEREAS, Recommended Guidance from the CDPH when the level is low:~~

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- ~~Stay up to date with COVID-19 vaccines~~
- ~~Get tested if you have symptoms~~
- ~~People may choose to mask at any time~~
- ~~People with symptoms/positive test/exposure should wear a mask~~

WHEREAS, on November 1, 2022, the City Council adopted Urgency Ordinance 2022-006 (Attachment 1) which has Rules of Conduct for attending meetings of legislative bodies at City Facilities and Section 7.3 requires face covering when the CDC Community Level for the County of Monterey is medium or high as of the date of posting the agenda for the meeting of the legislative body; and

WHEREAS, on February 28, 2023, the Governor of California terminated the State of Emergency due to COVID-19; and

WHEREAS, on March 7, 2023 Council requested staff to bring back a draft Urgency Ordinance at the Council meeting on April 4, 2023 to provide that wearing masks to attend meetings of legislative bodies inside of City buildings is only required if the CDC Community level at the time of agenda posting is "high" instead of "medium or high".

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CARMEL- BY-THE-SEA DOES ORDAIN AS FOLLOWS:

Section 1: Incorporation of Findings. The City Council of the City of Carmel- by-the-Sea incorporates the Whereas Clauses above by reference as though fully set forth here.

Section 2: Codification. This Ordinance shall not be codified in the Carmel-by-the-Sea Municipal Code.

Section 3: CEQA/Environmental Findings. The City Council exercises its independent judgment and finds that this Urgency Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, sections: 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment); 15060(c)(3) (the activity is not a project as defined in Section 15378); and 15061(b)(3), because the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The proposed Urgency Ordinance maintains the status quo and prevents changes in the environment pending the completion of the contemplated municipal code review. Because there is no possibility that this Urgency Ordinance may have a significant adverse effect on the environment, the adoption of this Urgency Ordinance is exempt from CEQA.

Section 4. Authority Pursuant to Applicable Law. Pursuant to California Government Code Section 8610, the City, while in a state of emergency proclaimed by the Director of Emergency Services and ratified by the City Council, may establish rules and regulations for dealing with the local emergency. The City Council finds and determines that it has the authority to enact this Urgency Ordinance pursuant to all applicable laws including, but not limited to, the California Emergency Services Act, the City Municipal Code, the declaration of local emergency issued by the City Council on March 13, 2020, Government Code Section 36937 (b) and the Findings set forth herein.

Section 5. Local Emergency. A local emergency continues to exist throughout the City, and the City has been undertaking, and will continue through cessation of this

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emergency to undertake, necessary measures and incur necessary costs, which are directly related to the prevention of the spread of the COVID-19 Virus and are taken in furtherance of: the Governor's Proclamation of a State of Emergency on March 4, 2020; the President of the United States' Declaration of a National Emergency on March 13, 2020; the City Council Resolution 2020-021 declaring the existence of a local emergency with the City due to COVID 19, the Orders issued by the Governor, State Public Health Officer and the County Public Health Officer due to COVID-19 and all applicable laws.

Section 6. Powers of City Director of Emergency Services. During the existence of the local emergency due to COVID-19, the powers, functions, and duties of the City Director of Emergency Services shall be those prescribed by state law, ordinances, and resolutions of this City notwithstanding otherwise applicable procedures, timelines or methods of action and the City Director of Emergency Services is expressly authorized to take any and all actions in furtherance of emergency powers to address the local emergency.

Section 7. Rules of Conduct for Attending Meetings of Legislative Bodies at City Facilities. It is hereby ordered and ordained that the following rules of conduct shall apply to attendance at meetings of Legislative Bodies at City facilities, as defined herein:

7.1 City Facility. For purposes of this Urgency Ordinance, the term “City Facility” or “City Facilities” means City Hall and any other property owned by the City where there is a meeting held of a Legislative Body.

7.2. Legislative Body. For purposes of this Urgency Ordinance, the term “Legislative Body” means the City Council, Planning Commission, Forest and Beach Commission, Historic Resources Board, Harrison Memorial Library Board of Trustees, Community Activities Commission and the Building Code Board of Appeals.

7.3 Face Covering. No person shall be permitted to enter or remain in City Facility at a meeting of a Legislative Body unless that person wears a face covering which covers both the mouth and nose at all times when the CDC Community Level for the County Monterey is ~~medium-or~~-high as of the date of posting the agenda for the meeting of the Legislative Body. The agenda will state the CDC Community Level and whether a face covering will be required for attendance at that meeting of the Legislative Body. Upon request, the City will provide anyone seeking to enter City Facility to attend a meeting of a Legislative Body with a face covering if they do not have one.

7.4 If anyone is unable or unwilling to comply with the requirements of this Section 7, they may attend the meeting remotely in the manner described in the Agenda posted for the meeting.

SECTION 8. Violations of this Urgency Ordinance shall be punishable as set forth in the City Municipal Code Section 1.16.010 and Section 2.64.100. In addition, persons who do not follow the Rules of Conduct set forth in this Urgency Ordinance must remain outside city-owned facilities or may be considered trespassers subject to removal by peace officers or any other method authorized under this Urgency Ordinance or under Government Code section 37359.

Section 9. Authorization of City Code Compliance Coordinator. Pursuant to California Penal Code § 836.5, the City Code Compliance Coordinator is authorized to issue criminal citations following the procedures set forth in California Penal Code §§ 853.5 through 853.6a, or such other procedures as the State of California may

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subsequently enact for violations of this Urgency Ordinance and violations of any section of the City Municipal Code or violation of any City ordinance.

Section 10. Authorization of City Director of Emergency Services. The City Director of Emergency Services and his/her designee(s) are hereby authorized to take all necessary action to implement and enforce this Urgency Ordinance.

Section 11. Severability. If any section, subsection, sentence, clause, or phrase of this Urgency Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of Urgency Ordinance. The City Council declares that it would have passed this Urgency Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of this Urgency Ordinance would be subsequently declared invalid or unconstitutional.

Section 12. Urgency Ordinance 2022-001 and Urgency Ordinance 2022-002 and Urgency Ordinance 2022-006 are hereby repealed.

Section 13. Effective Date and Duration. This Urgency Ordinance enacted under California Government Code Section 36937 will take effect immediately upon adoption by a four fifths (4/5) vote of the City Council. This Urgency Ordinance will remain in effect until rescinded by the City Council.

Section 14. Publication. The City Clerk is directed to certify this Urgency Ordinance and cause it to be published in the manner required by law.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL BY-THE-SEA this ~~1st~~4th day of ~~November 2022~~April 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

ATTEST:

Dave Potter
Mayor

Nova Romero, MMC
City Clerk