Presented by: The Manager
Presented: 09/13/2021
Drafted by: R. Palmer III

ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2021-42

An Ordinance Reestablishing the City and Borough of Juneau COVID-19 Mitigation Strategies and Providing for a Penalty.

WHEREAS, COVID-19 is a respiratory disease that can result in serious illness or death and is caused by the SARS-Cov-2 virus ("virus"), a new strain of the coronavirus that has not been previously identified in humans and is easily transmittable person to person; and

WHEREAS, on March 11, 2020, the World Health Organization ("WHO") declared the virus a pandemic; and

WHEREAS, on March 13, 2020, President Donald J. Trump declared a national emergency in response to the virus pandemic; and

WHEREAS, on March 22, 2020, the City and Borough of Juneau ("CBJ") received its first positive case of COVID-19; and

WHEREAS, Alaska continues to experience COVID-19 outbreaks and multiple regions in Alaska are at moderate or high alert levels; and

WHEREAS, while more community members are getting vaccinated for COVID, children under 12 are not eligible for vaccines, and variants of concern (Alpha/B.1.1.7, Beta/B.1.351, Gamma/P1, and Delta/B.1.617.2/AY.1) including the highly transmittable Delta variant have been detected in Juneau; and

WHEREAS, Southeast Alaska has seen a resurgence of COVID-19 outbreaks, including the highly transmittable Delta variant that is resulting in a significant increase in positive cases; and

WHEREAS, the average new COVID-19 positive cases per day is the highest it has been in the CBJ since the pandemic started: August (avg. 21 new cases per day) and September (24 cases new cases per day); and

WHEREAS, as of September 9, 2021 the overall community risk level is 3 (High); and

WHEREAS, other communities in the country and Alaska, including Anchorage, have experienced recent and sudden demands on healthcare services that resulted in a relatively permanent insufficiency of healthcare services that has endangered the public; and

WHEREAS, the existing COVID-19 Mitigation Strategies were reestablished with Emergency Ordinance 2021-33am and currently expire on October 31, 2021; and

WHEREAS, upon balancing the economic impacts and the personal impacts of whether to reestablish the COVID-19 Mitigation Strategies given the current circumstances, the public health and welfare is best served by reestablishing the COVID-19 Mitigation Strategies beyond October 31, 2021; and

WHEREAS, the updated COVID-19 Mitigation Strategies continue to provide structure and certainty as the community balances the needs to mitigate harm from COVID-19 and its evolving variants and keep the economy open; and

WHEREAS, any business or facility is free to require masks at their business or facility.

THEREFORE BE IT ENACTED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

Section 1. Classification. This ordinance is a noncode ordinance.

Section 2. Reserved.

Section 3. COVID-19 Mitigation Strategies.

(a) **Adoption.** The City and Borough of Juneau COVID-19 Mitigation Strategies identified in Exhibit A are adopted.

(b) **Determination of Incident Risk Level.** The Manager is authorized to determine which Incident Risk Level best fits the City and Borough of Juneau based on a comprehensive range of public health factors related to COVID-19.

(c) **Public Notice.** The Manager shall conspicuously identify the Incident Risk Level on the City and Borough of Juneau's webpage and widely distribute public notice when the level changes.

(d) **Exemptions.**

(1) **Exemption Request**. An entity or person may request an exemption from the COVID-19 Mitigation Strategies by submitting a site specific COVID-19 Mitigation Plan to the CBJ Emergency Operations Center by emailing covidquestions@juneau.org. The Emergency Operations Center may issue an exemption if the COVID-19 Mitigation Plan has sufficient measures and policies to mitigate the spread of COVID-19 in light of the Incident Risk Level.

(2) **Public Records**. All exemption requests, communication, and responses are presumptively public records. If an entity or person requests that the City and Borough of Juneau withhold any information contained in your COVID-19 Mitigation Plan from public release because the information is protected under AS 40.25.120(a), you must submit the following information with the request:

(A) Identify each set of discrete information that the entity or person asserts is confidential;

(B) Identify each specific legal authority that the entity or person asserts applies to each such set of information; and

(C) For each such set of information, explain why the entity or person asserts the information is confidential based on each legal authority the entity or person asserts applies to that information.

Should the City and Borough of Juneau receive a request for records under the Public Records Act applicable to any item marked confidential, the City and Borough of Juneau should notify the person or entity asserting confidentiality as soon as practicable prior to making any disclosure. The person or entity asserting confidentiality acknowledges it has five (5) calendar days after receipt of notice to notify the City and Borough of Juneau of its objection to any disclosure, and to file any action with any competent court to protect its interests. Should the person or entity asserting confidentiality fail to notify the City and Borough of Juneau of its objection or fail to file suit within five (5) calendar days, the CBJ may disclose the records.

(e) ~~**Reserved.**~~ **Violation.** A person who violates a mitigation strategy in Exhibit A shall be subject to a civil fine not to exceed $25.00 per violation, which shall be considered incorporated into CBJC 03.30.070(a); payment of the civil fine shall be accepted in satisfaction of the violation; and the violation shall be subject to CBJC 03.30.070(b)-(c) and CBJC 03.30.075-03.30.085. In addition to a civil fine, the City and Borough of Juneau may use all available civil enforcement options (i.e. injunction, revocation of certificate of occupancy, civil lawsuit, etc.) to assure compliance with this ordinance.

(f) **Amendments.** The Manager shall keep Exhibit A consistent with Centers for Disease Control and Prevention (CDC) guidance and present the revisions to Exhibit A at regular or special Assembly meetings for ratification.

(g) **Mask or Face Covering Mandate.**

(1) **Requirement.** All individuals must wear a mask or a face covering over their nose and mouth (i) as provided for in Exhibit A; (ii) when using public transportation, like Capital Transit; and (iii) when entering an area that is posted requiring use of a mask or face covering. This ordinance is subject to the conditions and exceptions stated below.

(2) **Face Shield.** A face shield is generally not permitted in lieu of a mask or face covering because face shields are less effective in stopping the spread of COVID-19. However, a face shield may be permitted in lieu of a mask or face covering for the following individuals, who must wear a face shield whenever a mask or face covering would be required unless it is impossible to do so:

(A) Any individual who cannot tolerate a mask due to a physical or mental disability;

(B) Individuals who are communicating with someone who is deaf or hard of hearing; or

(C) Individuals performing an activity that cannot be conducted or safely conducted while wearing a mask (for example a driver experiencing foggy glasses, a dental patient receiving care, or an equipment operator where there is a risk of dangerous entanglement).

(3) **Employment.** Employers are responsible to make sure employees who are present in the workplace have access to and wear masks or face coverings as required by this ordinance.

(4) **Exceptions.** This ordinance does not apply to the following categories of people or activities:

(A) Any child under the age of 2 years. These very young children should not wear a face covering because of the risk of suffocation. Additionally, masks are recommended, but not required for children ages 2-5. Daycare settings that serve preschool children are encouraged but not required to enforce mask usage for children age 2 and older.

(B) Individuals who are incarcerated, in police custody, or inside a courtroom; these individuals should follow guidance particular to their location or institution.

(C) Musicians, presenters, ministers, and others communicating to an audience or being recorded, for the duration of their presentation/practice/performance where mask usage impairs communication, and so long as safe physical distancing is maintained.

(D) Individuals removing their mask or face covering to eat, drink, or briefly scratch an itch.

(E) Employees within their own fully enclosed office or workspace, and employees within an unenclosed workspace if they are totally alone.

(F) Individuals doing high intensity exercise outdoors.

(5) **Denial of Service.** A person violating this ordinance is prohibited from entering, occupying, or remaining in the setting in which a mask or face covering is required. Provided, however, that this ordinance shall be applied in a manner consistent with the Americans with Disabilities Act (ADA) and any other applicable provision of law. Businesses and the City Manager for City and Borough of Juneau facilities, may choose to allow individuals who request an accommodation under the ADA to wear a face shield, or may consider accommodating these individuals through alternative means of providing goods or services, such as curbside, delivery, or telephonic service.

(6) **Proof of Medical Reason or Disability.** If a person declines to wear a mask or face covering because of a medical condition or disability as described above, this ordinance does not require them to produce medical documentation verifying the stated condition or disability.

(7) **Additional City and Borough of Juneau Facility Provision.**

(A) **Notice.** The City Manager is required to identify and conspicuously post notices for those City and Borough of Juneau public facilities or areas of public facilities in which people are required to wear a mask or face covering. The Manager should post face covering notices in public facilities and areas of public facilities in which maintaining six feet separation between people is difficult or where there are insufficient physical barriers to keep people six feet apart.

(B) **Provision of Face Covering.** For people who cannot afford or locate a face covering, the Manager shall make a face covering available on every Capital Transit bus and at any facility owned by the City and Borough of Juneau that requires a mask or face covering.

(8) **Definitions.**

(A) "Mask" means a medical grade mask (i.e. N95).

(B) "Face covering" means a cloth, polypropylene, paper, or other face covering that covers the nose and the mouth and that rests snugly above the nose, below the mouth, and on the sides of the face. The following are not face coverings because they allow droplets to be released: a covering with a valve designed to facilitate easy exhalation; mesh masks; lace masks; other coverings with openings, holes, or visible gaps in the design or material.

(C) "Face shield" means a clear plastic shield that covers the forehead, extends below the chin, and wraps around the sides of the face.

Section 4. Repeal of Ordinance 2021-33am. Ordinance 2021-33am is repealed.

Section 5. Effective Date. This ordinance shall be effective 30 days after its adoption. This ordinance expires at 12:01 a.m. on June 1, 2022, unless terminated earlier by the Assembly by motion.

Adopted this ___ day of _____, 2021.

_____
Beth A. Weldon, Mayor

Attest:

_____
Elizabeth J. McEwen, Municipal Clerk