



TOWN OF DURHAM  
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**AGENDA ITEM: # 12A**

**DATE: August 3, 2020**

## COUNCIL COMMUNICATION

**INITIATED BY:** Todd I. Selig, Administrator

**AGENDA ITEM:** DISCUSSION AND ACTION ON EMERGENCY ORDINANCE #2020-11 REQUIRING THE WEARING OF FACE COVERINGS UNDER CERTAIN CONDITIONS WITHIN THE TOWN OF DURHAM

**CC PREPARED BY:** Todd I. Selig, Administrator

**PRESENTED BY:** Todd I. Selig, Administrator

**AGENDA DESCRIPTION:**

Since March of this year there has been a pandemic situation with Coronavirus Disease 2019 (COVID-19) with many areas within the United States greatly impacted as case numbers are still rapidly increasing. It has been determined that the virus which causes COVID-19 spreads very easily and sustainably between people, particularly within indoor environments with limited fresh air exchange but also amongst persons in close physical proximity, indoors or outdoors, who cannot adequately social distance. COVID-19 can be spread by people who do not have symptoms (asymptomatic carriers) and therefore are unaware they are infected. It is therefore important that everyone wear cloth face coverings in public settings whether or not they are feeling ill.

The Town of Durham has an interest in protecting all persons within the community from unnecessary exposure to COVID-19. With its risk of contracting a devastating illness, it follows that the wearing of a face covering under certain circumstances is crucial. Cloth face coverings are most likely to reduce the spread of COVID-19 when they are widely used by people in public settings as they reduce the spray of respiratory droplets, particularly when combined with social/physical distancing and other sanitary measures such as washing hands or utilizing hand sanitizer.

On May 28, 2020, the Town Administrator issued Order #7 requesting the voluntary use of cloth face coverings by community members to help slow the spread of COVID-19 and similar recommendations by the NH Department of Health and Human Services. Despite this order, the use of face covering use in Durham by residents has been less than desired. At this time, health officials in the United States anticipate a second wave of the Covid-19 virus this fall.

On August 10<sup>th</sup>, approximately 15,000 University of New Hampshire students begin to return to Durham to resume in-person classes, traveling to the community from across the United States and countries around the world. Numerous community members have communicated with Town officials that unless mask wearing is mandated within downtown establishments, they will avoid downtown Durham and shop elsewhere out of a fear for their own health.

Section 3.9 “Emergency ordinances” of the Durham Town Charter allows the Town Council to adopt emergency ordinances by a two-thirds affirmative vote of those present and voting “to meet a public emergency affecting life, health, property or the public peace.” Because COVID-19 presents a clear and present danger to the general Durham population it behooves the community for the Town Council to adopt an emergency measure requiring the wearing of face coverings in certain situations to protect the public health.

Attached for the Council’s consideration is a draft Emergency Ordinance requiring the wearing of face coverings under certain conditions within the Town of Durham. Section 3.9 of the Town Charter states that “Every emergency ordinance, except one made pursuant to 3.10 of this Charter, shall automatically stand repealed as of the 61st day following the date on which it was adopted, but this shall not prevent reenactment of the ordinance in the manner specified in this section if the emergency still exists.” Its adoption requires a two-thirds (2/3) affirmative vote of those present and voting.

**LEGAL AUTHORITY:**

Section 3.9 “Emergency ordinances” of the Durham Town Charter.

**LEGAL OPINION:**

N/A

**FINANCIAL DETAILS:**

N/A

**SUGGESTED ACTION OR RECOMMENDATIONS:**

**MOTION:**

*The Durham Town Council does hereby ADOPT (as presented) (as amended), Emergency Ordinance #2020-11 requiring the wearing of face coverings under certain conditions within the Town of Durham, which will automatically stand repealed as of Friday, October 2, 2020. (2/3 AFFIRMATIVE ROLL CALL VOTE REQUIRED)*

Sally Tobias                    \_\_\_  
Dinny Waters                \_\_\_  
Al Howland                   \_\_\_  
Katherine Marple         \_\_\_  
Kenny Rotner                \_\_\_

Wayne Burton               \_\_\_  
James Lawson              \_\_\_  
Sally Needell               \_\_\_  
Andrew Corrow             \_\_\_

# EMERGENCY ORDINANCE #2020-11 OF DURHAM, NEW HAMPSHIRE

## AN EMERGENCY ORDINANCE REQUIRING THE WEARING OF FACE COVERINGS UNDER CERTAIN CONDITIONS WITHIN THE TOWN OF DURHAM

-WORKING DRAFT -  
7/29/2020

The Town of Durham, through the Town Council ordains that:

**WHEREAS**, there is a pandemic situation with Coronavirus Disease 2019 (COVID-19) with many areas within the United States greatly impacted as case numbers are still rapidly increasing; and

**WHEREAS**, infectious diseases are caused by germs such as viruses, bacteria, and parasites. COVID-19 is a viral illness that has the ability to be spread from person to person very easily through respiratory droplets. Public Health Officials have determined that it is well established that an individual infected with COVID-19 can transmit the disease whether or not they are exhibiting any symptoms; and

**WHEREAS**, it is clinically established that the best means of slowing the spread of a virus is through minimizing close personal contact with individuals in a public environment, social/physical distancing, covering one's mouth and nose by wearing a face covering, and utilizing frequent and proper hand washing. For optimal protection, the following key factors should be considered while wearing a face covering. The safe use of face coverings requires the wearer to maintain proper hand hygiene by hand washing frequently with either soap and water or hand sanitizer for at least 20 seconds. The wearer should prevent the spread of disease by avoiding touching their face, nose, or eyes and not touching the outside of the face coverings at all times; and

**WHEREAS**, social/physical distancing by keeping a distance of at least six feet between yourself and others also greatly protects against the spread of our respiratory droplets whether an individual is indoors or outdoors; and

**WHEREAS**, cloth face coverings are most likely to reduce the spread of COVID-19 when they are widely used by people in public settings as they reduce the spray of

respiratory droplets, particularly when combined with social/ physical distancing and other sanitary measures such as washing hands or utilizing hand sanitizer; and

**WHEREAS**, it has been determined that the virus which causes COVID-19 spreads very easily and sustainably between people, particularly within indoor environments with limited fresh air exchange but also amongst persons in close physical proximity, indoors or outdoors, who cannot adequately social distance; and

**WHEREAS**, as previously noted, COVID-19 can be spread by people who do not have symptoms (asymptomatic carriers) and therefore are unaware they are infected. It is therefore important that everyone wear cloth face coverings in public settings whether or not they are feeling ill; and

**WHEREAS**, the Town of Durham has an interest in protecting all persons within the community from unnecessary exposure to COVID-19 with its risk of contracting a devastating illness, it follows that the wearing of a face covering under certain circumstances is crucial; and

**WHEREAS**, the more closely a person interacts with others and the longer that interaction occurs, the higher the risk of COVID-19 spread; and

**WHEREAS**, the Town's Emergency Management Director and Health Officer have discussed this matter in detail while keeping current with the latest guidelines put forward by the Centers for Disease Control and Prevention (CDC) and other trustworthy organizations and recommend the following emergency ordinance measures to the Town Council for adoption; and

**WHEREAS**, on August 10<sup>th</sup>, approximately 15,000 University of New Hampshire students begin to return to Durham to resume in-person classes, traveling to the community from across the United States and countries around the world; and

**WHEREAS**, despite the issuance of Administrative Order #7 by the Town Administrator on May 28, 2020 requesting the voluntary use of cloth face coverings by community members to help slow the spread of COVID-19 and similar recommendations by the NH Department of Health and Human Services, the use of face covering use in Durham by residents has been less than desired; and

**WHEREAS**, health officials in the United States anticipate a second wave of the Covid-19 virus this fall; and

**WHEREAS**, numerous community members have communicated with Town officials that unless mask wearing is mandated within downtown establishments, they will avoid downtown Durham and shop elsewhere out of a fear for their own health; and

**WHEREAS**, the Durham Police Department has limited resources and numerous responsibilities critical to public safety; and

**WHEREAS**, the Town Council understands that the Durham Police Department may handle complaints regarding non-compliance with this Ordinance as lower priority calls for service with a delayed response or follow-up, or may use the complaint solely as information to identify future directed patrol areas and times; and

**WHEREAS**, because COVID-19 presents a clear and present danger to the general Durham population it behooves the community for the Town Council to take this emergency measure requiring the wearing of face coverings in certain situations to protect the public health.

**WHEREAS**, Section 3.9 “Emergency ordinances” of the Durham Town Charter allows the Town Council to adopt emergency ordinances by a two-thirds affirmative vote of those present and voting,

**NOW, THEREFORE BE IT RESOLVED** that the Town of Durham, through the Town Council ordains that in accordance with Section 3.9 of the Charter of the Town of Durham, the Town of Durham, through the chief of police, shall take immediate action to ensure that persons wear facial coverings under the conditions listed below within the Town of Durham.

**WEARING OF FACIAL COVERINGS IN THE TOWN OF DURHAM:**

1. Employees of all businesses shall wear a face covering over their mouth and nose when interacting with the public and whenever they are within six feet of a co-worker or a customer.
2. Members of the public entering or queued to enter, remaining in, or exiting from any business, including without limitation any outdoor area where business of any sort is conducted, work site, or Town of Durham government building, including the designated polling place at the Oyster River High School while elections are being held, must wear a face covering. The Oyster River Cooperative School District, University of New Hampshire, and State and Federal authorities may have different regulations for their facilities.
3. Members of the public entering or queued to enter a restaurant or establishment serving alcoholic beverages for the purpose of picking up food for takeout or any other purpose must wear a face covering. Members of the public dining indoors or outdoors at a restaurant may remove face covering while seated at their table. Members of the public must wear a face covering when entering, using, or leaving the restroom of a restaurant.

4. Members of the public utilizing sidewalks and other public ways within the Central Business, Professional Office, Church Hill, and Courthouse zoning districts as defined by the Durham Zoning Ordinance ([https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning\\_and\\_zoning/page/21561/zoning\\_map\\_downtown\\_march\\_2012\\_22x34.pdf](https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_and_zoning/page/21561/zoning_map_downtown_march_2012_22x34.pdf)), Chapter 175 of the Town Code, must wear a face covering when coming into contact with others and social/physical distancing of at least six feet is not be possible. *[For informational purposes only, these zoning districts generally encompass the following roads: Main St. from Garrison Ave. to Rt. 108 intersection; Dover Rd./Rt. 108 from Young Dr. to Newmarket Rd./Rt. 108; Newmarket Rd./Rt. 108 from Mill Pond Rd. to Dover Rd./Rt. 108; Schoolhouse Ln., Mill Rd. from Mill Plaza entrance to Main St.; Madbury Rd. from Main St. to Bagdad Rd.; Bagdad Rd. from Madbury Rd. to Dennison Rd.; Garrison Ave.; Strafford Ave. from Garrison Rd. to curve by Adams Tower; Woodman Rd. from Madbury Rd. to Dennison Rd.; Dennison Rd.; Pettee Brook Ln., Mathes Terr.; Rosemary Ln. Cowell Dr. from Madbury Rd. to Sauer Terr.]*
5. Members of the public utilizing public recreational lands are strongly encouraged but not required to wear a face covering over their nose and mouth to the fullest extent practicable and especially where there is a high likelihood of coming into contact with others and social/physical distancing of at least six feet may not be possible.
6. Residents, visitors, and members of the public entering or present at a residential complex of greater than two (2) units, whether inside or outside, are strongly encouraged but not required to wear a face covering in common areas and communal spaces to the fullest extent practicable and especially when there is a high likelihood of coming into contact with others and social/physical distancing of at least six feet may not be possible.
7. As used herein “face covering” means a covering made of cloth, fabric, or other soft or permeable material, without holes, that covers only the nose, mouth, and surrounding areas of the lower face. A face covering may be factory made or homemade and improvised from ordinary household material.
8. Notwithstanding the above this order does not require children under 10 years of age to wear face covering (parents should make their own judgment). Face covering is not recommended for children less than 2 years of age.
9. A face covering is also not required to be worn by any person if said person can show a medical professional has advised that wearing a face covering may pose a risk to said person for health-related reasons.

10. A person may temporarily remove a mask when in a business if obtaining a service or product that requires verification of the person’s identity or age.

**PENALTIES:**

Anyone who violates this ordinance AND refuses to comply with local, county, or state law enforcement officers to meet the requirements outlined herein shall be subject to a fine in the amount of \$100 for the first offence, \$200 for the second offense, and \$500 for the third and subsequent offense, and/or shall be summoned to the Dover District Court.

**EFFECTIVE DATE**

In accordance with Section 3.9 of the Town Charter, this Emergency Ordinance shall be effective upon adoption and shall stand repealed as of the 61<sup>st</sup> day following the date on which it was adopted, but this shall not prevent reenactment of the ordinance by the Town Council in the manner specified in Section 3.9 of the Charter if the emergency still exists.

**PASSED AND ADOPTED** this \_\_\_ day of \_\_\_,2020 by a two-thirds (2/3) affirmative roll call vote of \_\_\_\_\_ to \_\_\_\_\_ of the Durham Town Council as follows:

Sally Tobias	___	Wayne Burton	___
Dinny Waters	___	James Lawson	___
Al Howland	___	Sally Needell	___
Katherine Marple	___	Andrew Corrow	___
Kenny Rotner	___		

\_\_\_\_\_  
Katherine Marple, Chair  
Durham Town Council

***ATTEST:***

\_\_\_\_\_  
Lorrie Pitt, Town Clerk-Tax Collector





# Zoning Map March 2012 Durham, NH

## LEGEND

-  CB - Central Business
-  CC - Coe's Corner
-  C - Courthouse
-  CH - Church Hill
-  DBP - Durham Business Park
-  OR - Office And Research Rte. 108
-  ORLI - Office And Research & Light Industry
-  MUDOR - Multi-Unit Dwelling/Office Research
-  PO - Professional Office
-  RA - Residence A
-  RB - Residence B
-  RC - Residence C
-  R - Rural
-  UNH - UNH Properties

*The RC/R Zoning Boundary along Durham Point Road/Bay Road runs 350 feet from and parallel to the center line of the road.*



FOR PLANNING PURPOSES ONLY  
THIS MAP IS NOT INTENDED TO REPRESENT LEGAL DESCRIPTION OR CONVEYANCE

Map produced by  
Karen Edwards  
October 2008  
Updated March 2012

