

RESOLUTION NO. 186-20

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, CONFIRMING A DECLARATION OF A STATE OF EMERGENCY; REPEALING ALL RESOLUTIONS INCONSISTENT WITH PALM BEACH COUNTY COVID-19 ORDER NUMBER 2020-028; PROVIDING A CONFLICTS CLAUSE, AN EFFECTIVE DATE AND FOR OTHER PURPOSES.

WHEREAS, on March 9, 2020, Governor Ron Desantis issued Executive Order 20-52 declaring a state of emergency for the State of Florida as a result of COVID-19; and

WHEREAS, on March 13, 2020, Palm Beach County declared a local State of Emergency due to the Coronavirus pandemic, which has been extended in accordance with applicable law; and

WHEREAS, on March 13, 2020, a State of Emergency in the City of Delray Beach was proclaimed by the City Commission, which has been extended twenty-eight times due to the spread of the Novel Coronavirus Disease 2019 (COVID-19); and

WHEREAS, Palm Beach County experienced a sharp increase in the number of positive COVID-19 cases in May, June, and July and numerous virus control strategies were employed to slow the spread of the virus; and

WHEREAS, the City of Delray Beach recognizes that interventions such as facial covering directives and social distancing mandates provide the necessary safeguards for the safe reopening of certain business establishments; and

WHEREAS, during Phase 1 of re-opening, businesses in Palm Beach County were permitted to open subject to various executive and emergency orders requiring cleaning and hygiene protocols, facial coverings, social distancing, and restricted operating hours for businesses serving food and alcohol for on premises consumption and certain other businesses; and

WHEREAS, on September 4, 2020, Palm Beach County entered Incremental Phase 2 Re-Opening pursuant to the direction of Governor DeSantis; and

WHEREAS, on September 25, 2020, the Board of County Commissioners through the County Administrator modified the Incremental Phase 2 Re-Opening Plan and removed the restrictions on operating hours of certain businesses mandated in Executive Order 2020-018 as amended by Executive Order 2020-023; and

WHEREAS, on the same date, Governor Ron Desantis issued Executive Order 20-244 moving all Florida counties into Phase 3, providing that no COVID-19 emergency ordinance prevent an individual from working or from operating a business, providing that restaurants, including any establishment with a food service license not be limited by a

COVID-19 order to less than fifty percent (50%) of their indoor capacity and imposing certain requirements if such an establishment is limited to less than one hundred percent (100%) of its indoor capacity; and suspending the collection of fines and penalties associated with COVID-19 enforced upon individuals; and

WHEREAS, on September 29, 2020, the Palm Beach County Commission, through the County Administrator, issued Emergency Order Number 28 providing for Phase 3 Reopening in Palm Beach County consistent with the Governor's mandates; and

WHEREAS, Chapter 95 of the City of Delray Beach Code of Ordinances authorizes the City Manager to take necessary measures in order to protect the health, safety and welfare of the citizens of Delray Beach and the public at large; and

WHEREAS, the City of Delray Beach wishes to adopt, by reference, Palm Beach County Emergency Order 2020-028.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AS FOLLOWS:

Section 1. A declaration of a State of Emergency proclaimed on March 13, 2020 is hereby confirmed.

Section 2. The City of Delray Beach hereby adopts and incorporates by reference Palm Beach County Emergency Order Number 2020-028 dated September 29, 2020, attached hereto as **Exhibit A**.

Section 3. City of Delray Beach Resolutions imposing COVID-19 related restrictions on individual, businesses, and/or establishments are hereby repealed and replaced with this Resolution, with the exception of Resolution 176-20 (facial coverings).

Section 4. Facial Coverings Required. Notwithstanding the aforementioned repeal of prior orders, all individuals, business, and establishments shall adhere to the requirements in Resolution 176-20, which include, but are not limited to, mandating the use of facial coverings in all businesses and establishments; in public places where social distancing is not possible; in common area within private communities accessible to more than one housing unit; when utilizing the County's Palm Tran transit services; and when accessing governmental buildings. In addition, in accordance with Resolution 176-20, businesses and establishments shall continue to ensure compliance with facial covering mandates, including establishing a process for verification of compliance upon customer entry into the business or establishment. A business' or establishment's failure to ensure said compliance may result in fines, penalties, and/or any other enforcement measures authorized by law upon those businesses or establishments. As of the effective date of this Resolution, pursuant to Governor Desantis' Executive Order 20-244, COVID-19 related collection of fines and penalties upon individuals is suspended.

Section 5. Social Distancing Required. Notwithstanding the aforementioned repeal of prior orders, and to the extent not in conflict with applicable law, all individuals, businesses, and establishments shall adhere to all applicable social distancing guidelines issued by the Centers for Disease Control and Prevention (CDC). The foregoing shall apply to all persons located in all businesses and establishments, but said requirements shall not be imposed to in-fact limit restaurant capacity to less than one hundred percent (100%) of its indoor capacity at any given time.

Section 6. Cleaning and Disinfecting Requirements. Notwithstanding the aforementioned repeal of prior orders, and to the extent not in conflict with the applicable law, all businesses and establishments shall adhere to enhanced cleaning protocols, such as those in guidelines issued by the CDC relating to enhanced cleaning and disinfecting guidance for reopenings.

Section 7. This Resolution does not affect or limit the operations of Palm Beach County, the Palm Beach County School District, or any State or Federal office or facility.

Section 8. Any provision(s) within this Resolution that conflict with any state or federal law or constitutional provision, or conflicts with, or are superseded by, a current or subsequently issued Executive Order of the Governor or President of the United States, shall be deemed inapplicable and deemed to be severed from this Resolution, with the remainder of the Resolution remaining intact and in full force and effect.

Section 9. In addition to the enforcement provisions listed in Palm Beach County Emergency Order 2020-017, violations of the provisions of this Resolution shall be subject to enforcement pursuant to Chapter 95 of the Delray Beach Code of Ordinances. Consistent with the mandates of the Governor in EO 20-244, COVID-19 related collection of fines and penalties upon individuals is suspended.

Section 10. This Resolution shall be effective in accordance with Palm Beach County Emergency Order Number 2020-028 and shall expire upon the expiration of the existing State of Local Emergency declared on March 13, 2020, as same may be extended by subsequent order or declaration, unless earlier terminated.

PASSED AND ADOPTED on this the 9th day of October, 2020.

ATTEST:

Kateri Johnson
City Clerk

Jennifer Alvarez
Jennifer Alvarez, Interim City Manager



**EMERGENCY ORDER NUMBER 28
PALM BEACH COUNTY COVID-19
PHASE 3 REOPENING**

WHEREAS, COVID-19, a respiratory illness caused by a virus that spreads rapidly from person to person and may result in serious illness or death, constitutes a clear and present threat to the lives, health, welfare, and safety of the people of Palm Beach County; and

WHEREAS, on March 9, 2020, Governor Ron DeSantis, issued Executive Order 20-52 declaring a state of emergency for the State of Florida as a result of COVID-19, which has since been extended; and

WHEREAS, on March 13, 2020, pursuant to Section 252.38(3)(a)(5), Florida Statutes, Palm Beach County declared a local State of Emergency due to the Coronavirus pandemic, which has since been extended in accordance with applicable law; and

WHEREAS, on March 24, 2020, Governor Ron DeSantis also issued Executive Order 20-83 directing the State Surgeon General and the State Health Officer to issue a public health advisory for senior persons and persons that have a serious underlying medical condition that places them at a high risk of severe illness from COVID-19 to stay at home. Such conditions include, but are not limited to, chronic lung disease or moderate to severe asthma; serious heart conditions; immunocompromised status, including those in cancer treatment; and severe obesity; and

WHEREAS, Governor Ron DeSantis has issued a number of subsequent Executive Orders in response to the COVID-19 pandemic, including Executive Order 20-112, a Phase 1: Safe Smart Step-by-Step Plan for Florida's Recovery, under which the Governor reopened certain businesses; Executive Order 20-120 which, among other things, served to include Palm Beach County under Phase 1; and Executive Order 20-123, in which the Governor extended and brought all Florida counties into Full Phase 1; and

WHEREAS, Palm Beach County experienced a sharp increase in the number of positive cases of COVID-19 in late May, June and July and numerous virus control strategies, including but not limited to, restrictions on business operations and events, facial covering and social distancing mandates, cleaning and hygiene requirements, testing, and public education, were employed; and

WHEREAS, all Phase 1 businesses in Palm Beach County were permitted to open subject to various executive and emergency orders requiring enhanced cleaning and hygiene protocols, facial coverings, social distancing, and restricted operating hours for businesses serving food and alcohol for on premises consumption and certain other businesses; and

WHEREAS, given the above-mentioned interventions, and in consideration of the most current data and indicators related to COVID-19, on September 1, 2020, the Board of County Commissioners determined that it was appropriate to submit a request to Governor Ron DeSantis to move Palm Beach County to Phase 2 in accordance with the *Incremental Phase 2 Re-Opening Plan* recommended by the County Administrator; and

WHEREAS, on September 4, 2020, Governor Ron DeSantis authorized Palm Beach County to move to Phase 2 of the *Safe. Smart. Step-by-Step. Plan for Florida's Recovery*; and

WHEREAS, the County Administrator determined that it was necessary and appropriate to issue an emergency order authorizing additional business re-openings in accordance with the direction of Governor DeSantis and Step 1 of the *Incremental Phase 2 Re-Opening Plan* and Emergency Order 2020-024 was issued for that purpose on September 4, 2020; and

WHEREAS, on September 24, 2020, in further consideration of the data and analysis related to COVID-19 and the circumstances of local businesses, the Board of County Commissioners directed the County Administrator to further modify the *Incremental Phase 2 Re-Opening Plan* and to remove the restrictions on operating hours of certain businesses mandated in Emergency Order 2020-018, amended by Emergency Order 2020-023; and

WHEREAS, on September 25, 2020, through Emergency Order 2020-027, the County Administrator repealed the County's COVID-19 business operating hour restrictions;

WHEREAS, on September 25, 2020, Governor Ron DeSantis issued Executive Order 20-244, moving all of Florida's counties into Phase 3, providing that no COVID-19 emergency ordinance may prevent an individual from working or from operating a business, providing that restaurants, including any establishment with a food service license may not be limited by a COVID-19 order to less than fifty (50%) of their indoor capacity and imposing certain requirements if such an establishment is limited to less than one hundred percent (100%) of its indoor capacity; and suspending the collection of fines and penalties associated with COVID-19 enforced upon individuals; and

WHEREAS, the County Administrator, in light of the foregoing, has determined that it is necessary and appropriate to repeal and replace some of the prior Palm Beach County emergency orders imposing COVID-19 related restrictions on individuals, businesses, and establishments, while making clear that certain restrictions are still imposed to curtail the spread of COVID-19.

NOW, THEREFORE, IT IS HEREBY ORDERED pursuant to Palm Beach County Code Chapter 9, Article II, Section 9-35, as well as the authorities granted to me by Declaration of Emergency issued by Governor DeSantis in Executive Order 20-52, by Chapter 252, Florida Statutes, by the Board of County Commissioners, by the Palm Beach County Comprehensive Emergency Management Plan, and as otherwise provided by law, I hereby order as follows:

1. **Incorporation by Reference.** The foregoing recitals are hereby incorporated herein by reference.
2. **Applicability.** This Order applies in all incorporated and unincorporated areas of Palm Beach County. This Order is not intended to, nor shall it be construed to authorize the operation of any business or establishment that is currently prohibited from operating under Florida law. This Order also is not intended to, nor shall it be construed to, authorize any business or establishment that is operating in violation of applicable laws to continue such illegal operations, including, but not limited to, any operations in violation of any county or municipal zoning laws or emergency orders.
3. **Repeal and Replacement of Prior Orders.** With the exception of Palm Beach County Emergency Orders Nos. 2020-012 (facial coverings) and 2020-017 (enforcement), as extended and as may be amended, all prior Palm Beach County emergency orders imposing COVID-19 related restrictions on individuals, businesses, and/or establishments are hereby repealed and replaced with the instant Order. Such prior emergency orders that are hereby repealed include, but are not limited to, the following, as amended: Emergency Order Nos. 2020-005 (recreational facilities); 2020-006 (beaches); 2020-019 (vacation rentals); 2020-024 (Phase 2, Step 1); and 2020-025 (banquet halls).
4. **Facial Coverings Required.** Notwithstanding the aforementioned repeal of prior orders, all individuals, businesses, and establishments shall adhere to the requirements in Emergency Order 2020-012 (facial coverings), which include, but are not limited to, mandating the use of facial coverings in all businesses and establishments; in public places where social distancing is not possible; in common areas within private communities accessible to more than one housing unit; when utilizing the County's Palm Tran transit services; and when accessing governmental buildings. In addition, in accordance with Emergency Order 2020-012, businesses and establishments shall continue to ensure compliance with facial covering mandates, including establishing a process for verification of compliance upon customer entry into the business or establishment. A business' or establishment's failure to ensure said compliance may result in fines, penalties, and/or any other enforcement measures authorized by law upon those businesses or establishments. As of the effective date of this Order, pursuant to Governor DeSantis' Executive

Order 20-244, COVID-19 related collection of fines and penalties upon individuals is suspended.

5. **Social Distancing Required.** Notwithstanding the aforementioned repeal of prior orders, and to the extent not in conflict with applicable law, all individuals, businesses, and establishments, shall adhere to all applicable social distancing guidelines issued by the Centers for Disease Control and Prevention (CDC). The foregoing shall apply to all persons located in all businesses and establishments, but said requirements shall not be imposed to in-fact limit restaurant capacity to less than one hundred percent (100%) of its indoor capacity at any given time.
6. **Cleaning and Disinfecting Requirements.** Notwithstanding the aforementioned repeal of prior orders, and to the extent not in conflict with applicable law, all businesses and establishments shall adhere to enhanced cleaning protocols, such as those in guidelines issued by the Centers for Disease Control and Prevention (CDC) relating to enhanced cleaning and disinfecting guidance for reopenings.
7. **Enforcement.** As permitted by applicable law, the Sheriff of Palm Beach County, other law enforcement agencies including municipal law enforcement agencies, and any other personnel authorized by law, including, but not limited to, the personnel described in Section 9-37 of the Palm Beach County Code of Ordinances, are authorized to enforce this Order in accordance with the provisions of Emergency Order 2020-017, and any subsequent amendments thereto. As of the effective date of this Order, pursuant to Governor DeSantis' Executive Order 20-244, COVID-19 related collection of fines and penalties upon individuals is suspended.
8. **Savings Clause.** Notwithstanding the aforementioned repeal of prior emergency orders, all administrative and court orders, fines, and pending enforcement actions relating to prior emergency orders remain in full force and effect. However, pursuant to Governor DeSantis' Executive Order 20-244, COVID-19 related collection of fines and penalties upon individuals is suspended.
9. **Severability.** Any provision(s) within this Order that conflict(s) with any state or federal law or constitutional provision, or conflict(s) with, or are superseded by, a current or subsequently-issued Executive Order of the Governor or the President of the United States, shall be deemed inapplicable and deemed to be severed from this Order, with the remainder of the Order remaining intact and in full force and effect. To the extent application of some or all of the provisions of this Order is prohibited on the sovereign land of a federally or state recognized sovereign or Indian tribe, such application is expressly excluded from this Order. The provisions of this Order shall supersede the specific provisions of any previously issued County Emergency Order that is contrary to or in conflict with this Order.

10. **Effective Date.** This order shall be effective as of 5:00 p.m. on September 29, 2020. This order shall expire upon the expiration of the existing State of Local Emergency, as same may be extended by subsequent order or declaration, unless earlier terminated by subsequent order.

PALM BEACH COUNTY

By: Verdema C. Baker
County Administrator
9/29/2020
Date

**APPROVED AS TO
LEGAL SUFFICIENCY**

By: LDC for Denise Marie Nieman
County Attorney

ATTEST
CLERK & COMPTROLLER
Sharon R. Back
By: _____
Clerk