

ANCHORAGE, ALASKA
AO No. 2021-91(S)

1 **AN ORDINANCE OF THE ANCHORAGE MUNICIPAL ASSEMBLY REGARDING**
2 **PUBLIC HEALTH AND SAFETY MEASURES FOR THE COVID-19 PANDEMIC.**
3

4
5 **WHEREAS**, on July 27, 2021 the Centers for Disease Control and Prevention
6 (CDC) updated their public health recommendations given new evidence on the
7 highly transmissible B.1.617.2 (Delta) variant of the virus that causes COVID-19,
8 which is now the dominant variant circulating in Alaska and around the United
9 States; and

10
11 **WHEREAS**, the CDC's updated guidance includes a recommendation that all
12 people, including fully vaccinated people, wear a mask in public indoor settings in
13 areas of substantial or high transmission of COVID-19; and

14
15 **WHEREAS**, the CDC notes that until vaccination coverage is high, communities and
16 organizations should regularly assess the need for prevention strategies, based on
17 five critical factors, including: 1) level of SARS-CoV-2 community transmission; 2)
18 health system capacity; 3) vaccination coverage; 4) capacity for early detection of
19 increases in COVID-19 cases; and 5) populations at risk for severe outcomes from
20 COVID-19; and

21
22 **WHEREAS**, despite drops in case counts this past spring and early summer, the
23 Municipality of Anchorage (MOA), and all of Alaska, has seen a marked increase in
24 COVID-19 cases over the past two months, and the Municipality, and most of
25 Alaska, is currently in high alert status for per capita incidence of new cases of
26 COVID-19, based on the total number of new reported cases per 100,000 persons
27 in the past 7 days; and

28
29 **WHEREAS**, the Alaska State Hospital & Nursing Home Association, as well as
30 representatives from hospitals in Anchorage, have expressed concerns about the
31 capacity of our local health care system to respond to rapid increases in COVID-19
32 cases and related hospitalizations; and

33
34 **WHEREAS**, on September 1st, a record 30 patients were holding in the emergency
35 department at Providence Hospital and the emergency room waiting area was past
36 capacity for safe distancing, so some patients waited in their cars; and

37
38 **WHEREAS**, on September 1st, Jared Kosin, president and CEO of the Alaska State
39 Hospital and Nursing Home Association told the Anchorage Daily News, "I want to
40 be clear and on the record: We are in crisis"; and

41
42 **WHEREAS**, on September 2nd during testimony at a hearing of the State
43 Legislature's House Health and Social Services Committee describing the current
44 crisis situation to state legislators, Dr. Robert Onders of the Alaska Native Tribal

1 Health Consortium said “We are not doing well at all,” Dave Wallace, CEO of Mat-
2 Su Regional Medical Center said, “We are in disaster mode here,” and Preston
3 Simmons, CEO of Providence Alaska said “We are being tested like never before”;
4 and

5
6 **WHEREAS**, on September 8th, there were 208 people hospitalized with the virus
7 around the state, higher than at any other point in the pandemic, and 117 in
8 Anchorage hospitals, according to the official Anchorage Municipal COVID-19 Data
9 dashboard; and

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11 **WHEREAS**, on August 30th, the Anchorage School District had to suspend certain
12 student bus routes on an alternating schedule due to a shortage of drivers related
13 to COVID-19 concerns, on September 1st the ASD Superintendent reported four
14 classrooms in the district have had to transition to at-home learning as a result of
15 COVID-19 spread, and on September 10th the ASD COVID-19 dashboard reports
16 338 active confirmed self-reported positive COVID-19 cases among enrolled
17 students; and

18
19 **WHEREAS**, over the past two weeks hospitals have begun instituting additional
20 restrictions such as pausing all visitation except for several specific exemptions:
21 children under 18 can have one caregiver with them; women in labor can have one
22 partner; and families can visit patients who are dying; and

23
24 **WHEREAS**, in late August, 26 out of 136 COVID-positive people hospitalized in
25 Alaska were vaccinated, according to the Alaska State Hospital and Nursing Home
26 Association, and of 33 COVID-19 patients in the ICU, five were vaccinated, and out
27 of 18 on ventilators, one was vaccinated; and

28
29 **WHEREAS**, the CDC recognizes that increasing COVID-19 vaccination coverage
30 remains the most important public health action to end the pandemic; and

31
32 **WHEREAS**, 59.3% of MOA residents age 12 and older have completed the full
33 vaccination series; and

34
35 **WHEREAS**, children under the age of 12 are not eligible for vaccination at this time
36 and the CDC recommends implementing other protection strategies to protect
37 people who are not fully vaccinated; and

38
39 **WHEREAS**, the CDC reports that proven effective strategies against SARS-CoV-2
40 (COVID-19) transmission, beyond vaccination, include using masks consistently
41 and correctly, maximizing ventilation, maintaining physical distance, and avoiding
42 crowds; and

43
44 **WHEREAS**, the CDC recommends to maximize protection from the Delta variant to
45 wear a mask indoors in public if in an area of substantial or high transmission, and
46 to follow basic public health measures such as staying home when sick,
47 handwashing, and regular cleaning of high-touch surfaces are also encouraged; and

48
49 **WHEREAS**, it is in the best interest of the MOA and its residents to update protocols
50 at Municipal buildings to align with new public health guidance, in order to minimize

1 preventable illness and death during the current surge of COVID-19 cases; and

2
3 **WHEREAS**, the Anchorage Health Department issues COVID-19 risk assessments
4 and has consistently made the following recommendations to the public: (1) Get
5 vaccinated; (2) Wear a mask in public indoor settings if in an area of substantial or
6 high transmission; (3) Practice social distancing; (4) Wash hands for at least 20
7 seconds or sanitize hands frequently; and (5) Get tested if experiencing COVID-19
8 symptoms or are exposed to someone with COVID-19, regardless of vaccination
9 status; and

10
11 **WHEREAS**, the Anchorage Health Department's risk assessment also include
12 recommendations for local businesses that Dr. Savitt, Chief Medical Officer for the
13 Municipality, further indicated should also apply to the Municipal workforce as well:
14 (1) Encourage and continue to support telework when feasible; (2) Encourage use
15 of virtual meetings versus in-person meetings when feasible; (3) Encourage event
16 organizers to consider keeping number of participants small, encourage mask
17 wearing and hosting events outside whenever feasible; (4) Encourage unvaccinated
18 front line workers to get tested weekly and anyone experiencing symptoms of
19 COVID-19 to get tested as needed to ensure continuity of critical services; (5)
20 Consider allowing employees to get tested or vaccinated on work time; and (6)
21 Encourage all employers to review OSHA's Guidance on Mitigating and Preventing
22 the Spread of COVID-19 in the Workplace; and

23
24 **WHEREAS**, the Pfizer BioNTech COVID-19 vaccine, to be marketed as Comirnaty,
25 received the Food and Drug Administration's first full approval for individuals age 16
26 and older starting on August 23, 2021, taking it out of emergency use authorization
27 status for adults, now that it has met the high standards for safety, effectiveness,
28 and manufacturing quality the FDA requires; and

29
30 **WHEREAS**, Mayor Bronson when interviewed about the challenges the Municipality
31 is facing with regard to the effects of COVID-19, especially hospital capacity, he
32 responded "I don't know what more we can do," consistent with his stance to not to
33 institute Municipal areawide mandates applicable to individuals and private
34 businesses; and

35
36 **WHEREAS**, management authority over Municipal buildings is vested in the
37 Executive Branch under the Mayor per Anchorage Municipal Code section
38 25.20.050, and he may exercise control over Municipal land including issuing
39 directives regulating their use; and

40
41 **WHEREAS**, on September 9, 2021, President Biden issued new directives to the
42 Occupational Safety and Health Administration to require all employers with over
43 100 employees to mandate workers to be vaccinated or face weekly testing and will
44 also mandate that the businesses offer employees paid time off to get vaccinated;
45 and

46
47 **WHEREAS**, even though the Municipality has over 1,000 employees, on September
48 9th in response to the announcement about the new federal directives to OSHA,
49 Mayor Bronson issued a statement that if the Municipality is not constitutionally
50 required to comply with the President's directive, then he would not require it of the

1 Municipal workforce, pending legal advice; and

2
3 **WHEREAS**, a state report by the Alaska Division of Public Health released in
4 January 2021, on Anchorage’s restrictions last summer, have shown that masking,
5 capacity restrictions and gathering limitations help ease the burden on hospitals and
6 prevent deaths by slowing the spread of COVID-19; and

7
8 **WHEREAS**, on September 17, 2021, Joint Base Elmendorf-Richardson (JBER)
9 declared a public health emergency and Lieutenant General David Krumm stated
10 “the lack of mitigation measures off-base has resulted in alarmingly high infection
11 rates, hospitalizations and deaths in our community”; **and**

12
13 **WHEREAS, the Municipality has the power to legislate for the health and**
14 **welfare of Anchorage residents and visitors under Charter § 3.01, and this**
15 **legislative power is vested in the Assembly, pursuant to Charter §4.01;** Now
16 therefore,

17
18 **THE ANCHORAGE ASSEMBLY ORDAINS:**

19
20 **Section 1.** The Assembly hereby finds that a health crisis exists with the COVID-
21 19 pandemic based on the circumstances described in this ordinance, and that the
22 unforeseen rapid increase in COVID-19 infections and hospitalizations have
23 resulted in insufficiency of services by the health care system and local hospitals
24 substantial enough to endanger the public health, safety or welfare.

25
26 **Section 2.** A substantial or high alert level occurs when either of the following two
27 criteria are met: there are more than 50 new cases of COVID-19 per 100,000
28 persons in the MOA over the past 7 days; or the percentage of positive COVID-19
29 tests in the past 7 days exceeds 8%. So long as the Municipality of Anchorage is in
30 the substantial or high alert level for community transmission of COVID-19 and at
31 any time the Municipality of Anchorage again reaches one of these levels, the
32 requirements of this ordinance shall be in effect.

33
34 **Section 3.** All individuals must wear masks or face coverings over their noses and
35 mouths when they are (a) indoors in public settings or communal spaces outside
36 the home; or (b) outdoors at large crowded public events, **regardless of whether**
37 **they have been vaccinated for COVID-19.** Unvaccinated individuals are
38 additionally encouraged to wear masks at all outdoor public gatherings, regardless
39 of size.

40
41 A. A face shield is generally not permitted in lieu of a mask or face
42 covering, as face shields are less effective in stopping the spread of
43 COVID-19. However, face shields may be permitted in lieu of a mask
44 or face covering for the following individuals, who must wear a face
45 shield whenever a mask or face covering would be required unless it
46 is impossible to do so:

- 47
48 1. Any individual who cannot tolerate a mask due to a physical or
49 mental disability;
50 2. Individuals who are communicating with someone who is deaf

- 1 or hard of hearing;
- 2 3. Individuals performing an activity that cannot be conducted or
- 3 safely conducted while wearing a mask (for example, a driver
- 4 experiencing foggy glasses, a dental patient receiving care, an
- 5 equipment operator where there is a risk of dangerous
- 6 entanglement).
- 7 4. Employers must make sure employees who are present in the
- 8 workplace have access to and wear masks or face coverings
- 9 when with the public or unvaccinated coworkers.

10

11 **Section 4.** This Ordinance does not apply to the following categories of people or

12 activities:

- 13
- 14 A. Any child under the age of 2 years. Additionally, masks are
- 15 recommended, but not required, for children ages 2-5. Daycare
- 16 settings that serve preschool children are encouraged but not required
- 17 to enforce mask usage for children age 2 and older.
- 18
- 19 B. Individuals who are incarcerated, in police custody, or inside a
- 20 courtroom; these individuals should follow guidance particular to their
- 21 location or institution.
- 22
- 23 C. Presenters, musicians, others communicating to an audience or being
- 24 recorded, if they are 10 feet from the audience and all members of the
- 25 audience are wearing masks or face coverings.
- 26
- 27 D. Individuals removing their masks or face coverings to eat, drink, or
- 28 briefly scratch an itch.
- 29
- 30 E. Employees within their own fully enclosed office or workspace or
- 31 within an unenclosed workspace if they are totally alone.
- 32
- 33 F. Fully vaccinated employees working in a separate room from the
- 34 public and unvaccinated coworkers. Employers wishing to utilize this
- 35 exception must verify their employees' vaccination status in a manner
- 36 consistent with workplace anti-discrimination laws.
- 37
- 38 G. Individuals while they are swimming, diving, **or participating in an**
- 39 **organized or sanctioned athletic activity or competition where**
- 40 **distancing is not possible or practical (such as running, hockey,**
- 41 **football, volleyball, and wrestling); however, for indoor sports,**
- 42 **athletes will still wear masks while on the sidelines [OR**
- 43 **COMPETITELY WRESTLING].**
- 44
- 45 H. Individuals performing an activity that cannot be conducted or safely
- 46 conducted while wearing a mask.
- 47
- 48 I. Individuals who cannot tolerate a mask due to physical or mental
- 49 disability.
- 50

1 **Section 5.** Businesses and building owners shall deny admittance to any individual
2 who fails to comply with this Ordinance and shall require or compel removal of such
3 individuals from the premises. Provided, however, that this regulation shall be
4 applied in a manner consistent with the federal Americans with Disabilities Act
5 (ADA) and any other applicable provision of law. Businesses may choose to allow
6 individuals who request an accommodation under the ADA to wear a face shield, or
7 may consider accommodating these individuals through alternate means of
8 providing goods or services, such as curbside, delivery, or telephonic service.

9
10 **Section 6.** Facilities in the ownership or control of the Municipality of Anchorage
11 shall comply with Section 5 of this Ordinance. The Municipal Manager, Real Estate
12 Department Director, and head of the department with management authority over
13 a Municipal facility is hereby authorized to interpret and apply the exceptions in
14 Section 4.

15
16 **Section 7.** When the Municipality of Anchorage is in the substantial or high alert
17 level for community transmission of COVID-19, as defined in Section B, the
18 Municipality of Anchorage shall:

- 19
20 A. Support telework for employees when feasible.
- 21
22 B. Notwithstanding municipal code, use virtual meetings versus in-
23 person meetings when feasible. Video conferencing is preferred.
- 24
25 C. Keep all events and gatherings to a small number of participants,
26 encourage mask wearing, and host events outside when feasible.
- 27
28 D. Encourage front line workers to get tested weekly and also when
29 experiencing COVID-19 symptoms.
- 30
31 E. Allow employees to get tested and vaccinated on work time.

32
33 **Section 8.** The Anchorage Assembly requests the Mayor strongly encourage,
34 through public health communication platforms and on his own behalf as Mayor,

- 35
36 A. the use of masks in public indoor spaces, regardless of vaccination
37 status;
- 38
39 B. vaccinations for those residents who are eligible to get vaccinated;
40 and
- 41
42 C. observance of physical distancing, limiting gatherings, and avoiding
43 crowds.

44
45 **Section 9.** The Anchorage Assembly recommends and encourages all people to
46 practice effective strategies to prevent the spread of COVID-19, including getting
47 vaccinated, maintaining physical distance, avoiding crowds, and practicing basic
48 public health measures such as staying home when sick, handwashing, and regular
49 cleaning of high-touch surfaces. The Assembly requests the Mayor issue public
50 health information, including periodic briefings, to the public consistent with these

1 recommendations.

2
3 **Section 10.** The Municipality reserves the right to use all available enforcement
4 options to assure compliance with this **ordinance [ORDER], including seeking**
5 **civil fines and injunctive relief. Enforcement may occur under AMC sections**
6 **15.05.070 or 15.20.020. Definitions of terms in Title 15 applicable to those**
7 **sections are incorporated by this ordinance, except as to defined terms in**
8 **Section 11. Violation of orders to cease activity in violation of this ordinance**
9 **or to comply with this ordinance may be prosecuted under AMC section**
10 **8.30.010. Each day of violation of any provision of this ordinance shall**
11 **constitute a separate offense.**

12
13 **A. Upon application for injunctive relief and a finding that a person**
14 **is violating or threatening to violate any provision of this**
15 **ordinance, or any order issued pursuant to this ordinance, the**
16 **superior court shall grant injunctive relief to restrain the**
17 **violation.**

18
19 **B.** Violation of this **ordinance [ORDER]** does not create grounds for
20 residents to harass individuals who do not comply with it. **Any person**
21 **aggrieved by a violation of this ordinance may initiate a private**
22 **enforcement action before the administrative hearings officer to**
23 **abate the violation.**

24
25 **1.** **A private enforcement action is commenced upon filing of**
26 **a written complaint to the administrative hearings officer.**
27 **The complaint must identify by name and description or**
28 **street address the property involved, the business name if**
29 **the violation involves a business entity, the record owner**
30 **of the property, the provision of this ordinance alleged to**
31 **be violated, and the facts upon which the complaint is**
32 **based. The provisions of Title 14 apply to the initiated**
33 **proceeding.**

34
35 **C.** **The Assembly hereby refers civil violations of this ordinance to**
36 **the jurisdiction of the administrative hearings officer pursuant to**
37 **AMC subsection 14.20.020A.3. Fines shall be in accordance with**
38 **the fine schedule in AMC section 14.60.030 for violations of AMC**
39 **section 15.20.020A (first offense \$50.00-\$300.00, second and**
40 **subsequent offense \$300.00-\$600.00). Enforcement of AHO**
41 **orders may be pursued by the Municipality under AMC section**
42 **14.20.030.**

43
44 **Section 11.** Definitions.

45
46 A. "Mask" means a medical grade mask.

47
48 B. "Face covering" means a cloth, polypropylene, paper or other face
49 covering that covers the nose and the mouth and that rests snugly
50 above the nose, below the mouth, and on the sides of the face.

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1. The following are not face coverings because they allow droplets to be released: a covering that incorporates a valve that is designed to facilitate easy exhalation, mesh masks, lace masks or other coverings with openings, holes, visible gaps in the design or material, or vents.

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

D. "Fully vaccinated" individual is an individual who has received a COVID-19 vaccine where at least two weeks have elapsed since receipt of the Johnson & Johnson vaccine or two weeks since the second dose of the Moderna or Pfizer vaccines.

E. "Unvaccinated" individual means any individual who is not fully vaccinated.

F. "Large crowded public events" means events such as live performances, parades, and sporting events bringing together a multitude of individuals from different households where six feet of physical distancing between household groups is not maintained.

Section 12. This Ordinance shall be effective immediately upon passage and approval by the Assembly. This ordinance shall expire December 31, 2021, without further action by the Assembly. The Assembly may, by resolution and without a public hearing if it chooses, terminate this ordinance before the expiration date herein.

PASSED AND APPROVED by the Anchorage Assembly this _____ day of _____, 2021.

Chair of the Assembly

ATTEST:

Municipal Clerk