

Item #: 46

Moved by: TURNER

Prepared by: Marcy Ingram

Seconded by: FORD

Reviewed by: Megan Smith

ORDINANCE NO. 514

ORDINANCE TO AMEND THE SHELBY COUNTY CODE OF ORDINANCES BY AMENDING CHAPTER 8 – BUSINESSES AND BUSINESS REGULATIONS BY CREATING A NEW ARTICLE PROVIDING THE SHELBY COUNTY HEALTH DEPARTMENT (SCHD) WITH THE AUTHORITY TO ISSUE A \$50.00 CIVIL FINE TO THOSE OWNERS OF BUSINESSES IN VIOLATION OF THE HEALTH DIRECTIVE AND/OR COUNTY FACE MASK DIRECTIVE. SPONSORED BY COMMISSIONER VAN D. TURNER, JR.

WHEREAS, The current pandemic caused by the novel Coronavirus Disease (COVID-19) is having a tremendously negative impact in Shelby County, Tennessee (County) as the numbers of positive cases continue to increase daily according to the Shelby County Health Department; and

WHEREAS, Shelby County Commissioners are truly concerned with the well-being of all those in the County as the positive cases and deaths continue to grow and recognize that certain groups are more vulnerable and more susceptible than others, e.g., the elderly and the people with compromised immune systems are most likely to become severely ill or die from the virus requiring that action be taken to protect these groups from the spread of COVID-19; and

WHEREAS, Governor Bill Lee issued Executive Order Nos. 30, 38, and 54 (as amended), on April 28, 2020, May 22, 2020, and July 3, 2020, respectively, providing counties with locally run health departments the authority to issue additional orders or measures related to the containment or management of the spread of COVID-19 and to require the use of facial coverings; and

WHEREAS, The SCHD continues to see a rise in community transmission, which has caused the continued need for the issuance of health directives with specific guidance to the public and business populations and those governing the use of cloth face coverings; and

WHEREAS, The SCHD published "Formal Issuance of Health Order and Directive No. 15" (Health Directive) on November 20, 2020, which requires compliance with its mandates by all residents, visitors, and owners/operators of services, facilities, and/or businesses in Shelby County, Tennessee; and

WHEREAS, The SCHD, co-signed by Mayor Harris, issued a "Formal Issuance of Face Mask Directive No. 3 Regarding Wearing Cloth Face Coverings" (County Face Mask Directive) addressed to "Residents, Services, Businesses, and Visitors of Shelby County, Tennessee," on November 20 2020, based on the necessity of communicable disease control; and

WHEREAS, All Health Directives define those steps that must be taken in order to limit the spread of COVID-19, which includes, but is in no way limited to, social distancing and the wearing of face coverings, and County Face Mask Directives provide that "Face Coverings are not a substitute for social distancing. Even if wearing a Face Covering, persons should practice appropriate social distancing, stay six feet apart, clean their hands frequently, and take other everyday preventive actions"; and

WHEREAS, The SCHD has been authorized by the Governor of the State of Tennessee to manage the COVID-19 pandemic in Shelby County, Tennessee, which in turn provides the ability to seek Class A misdemeanors, a criminal offense, for all individual violations of the Health Directive and County Face Mask Directive; and

WHEREAS, The SCHD has presented the grave status of the pandemic in Shelby County to the Board of Commissioners and the Board of Commissioners has openly expressed a desire to provide local enforcement support to the SCHD that balances the need to effectuate the Health Directive and County Face Mask Directive without the need to pursue criminal penalties to ensure the public health, safety, and welfare of citizens in Shelby County; and

WHEREAS, Pursuant to Article II, Section 2.01 of the Shelby County, Tennessee Charter, this body may adopt any Resolution or Ordinance not in conflict with the general laws of the State of Tennessee or the Tennessee Constitution.

NOW, THEREFORE BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SHELBY COUNTY, TENNESSEE, That the Shelby County Board of Commissioners hereby adopts the following Ordinance to amend the Code of Ordinances, Chapter 8, entitled Businesses and Business Regulations, to establish a new article entitled Article XIX. –Pandemic-Related Health Directives.

Section 1. Purpose

The purpose of this Ordinance is to provide the Shelby County Health Department, in furtherance of pandemic-related directives and orders, with an enforcement mechanism of those directives and orders which does not require the closure of operations and businesses subject to this ordinance or does not impose a criminal penalty.

Section 2. Authorization of Civil Penalty

Pursuant to authority granted to it by the Shelby County Charter, executive orders of the Governor of the State of Tennessee or other pertinent local, state, and/or federal laws, regulations, or declarations of emergency to issue additional orders or measures related to a pandemic response, such as those efforts undertaken to contain or respond to the COVID-19 pandemic, the SCHD is authorized to issue a \$50.00 civil fine, at its discretion, to any business in Shelby County, Tennessee for each individual, separate violation of the Health Directive and/or County Face Mask Directive (including subsequent health

directives and county face mask directives) per occurrence, requiring all residents, visitors, and owner/operators of services, facilities, and/or business in Shelby County, Tennessee and visitors within Shelby County, Tennessee to socially distance where required, limit occupancy where mandated, require a mask or cloth face covering when required to do so and adhere to safety measures for all services and businesses during a pandemic response.

BE IT FURTHER ORDAINED, That the Shelby County Health Department is directed to continue to publish the current Health Directive and County Face Mask Directive to the Shelby County Health Department's website and ensure wide dissemination of its directives to the public. Further, the SCHD must present a satisfactory plan of implementation, which is approved by the Shelby County Sheriff, County Mayor and County Health Director, before levying any civil fine for violations of the directives.

BE IT FURTHER ORDAINED, That businesses who, after a first visit and written warning, subsequently violate this Ordinance are subject to a \$50.00 civil penalty for each occurrence payable to the municipality where the violation occurred (or payable to Shelby County Government for the unincorporated areas of Shelby County). For any first penalty issued, there shall be a cap of \$500.00 on that occasion.

BE IT FURTHER ORDAINED, That this Ordinance shall remain in effect until it is rescinded, superseded, amended, or at such time that it sunsets upon satisfaction of one of the following criteria: 1) that seventy percent (70%) of the citizens of Shelby County, Tennessee have been vaccinated against the coronavirus; 2) that all hospitals of Shelby County, Tennessee have an ICU capacity of 75% or less for a minimum of two weeks; 3) the date of June 30, 2021 and no later.

BE IT FURTHER ORDAINED, That Investigators for the Shelby County Health Department shall have the authority to issue fines referenced herein, which may be appealed to Division Fourteen of General Sessions Court for Shelby County, Tennessee,

having due authority to review said fines issued for violation of this Ordinance and shall have authority to retract those fines for individual bad actors.

BE IT FURTHER ORDAINED, That the various sections, clauses, and words of this Ordinance are severable, and that any portion deemed unlawful may be elided and shall not affect the remaining portions hereof.

BE IT FURTHER ORDAINED, That this Ordinance requires a two-thirds (2/3rd) vote by this body and shall take effect in accordance with the Shelby County Charter, Article II, Section 2.06 (C), the public welfare requiring same.



Lee Harris
County Mayor

Date: 12/21/2020

ATTEST:

Clerk of County Commission

FIRST READING: December 7, 2020

SECOND READING: December 16, 2020
AS AMENDED

ADOPTED
THIRD READING: December 21, 2020
AS AMENDED