

FOURTH AMENDED ORDINANCE NO. 2020-10-4A

**OF THE CITY COUNCIL OF MARFA, TEXAS
REQUIRING INDIVIDUALS TO WEAR AND
BUSINESSES TO MANDATE FACE COVERINGS**

WHEREAS, on March 13, 2020, the Governor of the State of Texas declared a state of disaster and the President of the United States of America declared a national emergency in relation to the pandemic spread of COVID-19; and

WHEREAS, by declaration issued on March 19, 2020, City of Marfa Mayor Manuel V. Baeza declared a local state of disaster for the City of Marfa, Texas, which was continued and extended by the Marfa City Council through April 24, 2020; and on April 2, 2020, Mayor Baeza issued his First Supplemental Disaster Declaration, which was continued and extended by the Marfa City Council through April 30, 2020; and

WHEREAS, on April 27, 2020, Governor Abbott released his Executive Order GA-18 and the Governor's Report to Open Texas, and specified that GA-18 superseded all local orders; and on May 5, 2020, Governor Abbott released Executive Order GA-21, superseding GA-18 and expanding reopened services; and on June 3, Governor Abbott issued Executive Order GA-26, instituting Phase 3 of opening Texas; and

WHEREAS, in response to GA-18, on April 29, 2020, the Marfa City Council allowed Ordinance #2020-03-2A (Shelter in Place) to expire according to its terms; and continued and renewed Ordinance #2020-02-2A (Disaster Declaration) until May 15, 2020; and on May 12, 2020 Marfa City Council passed Ordinance #2020-08 to continue the disaster declaration through June 11, 2020 in keeping with Governor Abbott's Executive Orders; and

WHEREAS, as of June 18, 2020, there are 9 confirmed cases of COVID-19 within the City of Marfa; with one travel-related and the others related to community spread; and

WHEREAS, as of June 26, 2020, there are 14 confirmed cases of COVID-19 within the City of Marfa, with 2 recovered cases; and

WHEREAS, as of July 14, 2020, there are fifteen (15) confirmed cases of COVID-19 within the City of Marfa, with four (4) active cases and eleven (11) recovered cases; and

WHEREAS, as of August 11, 2020, there are twenty-six (26) confirmed cases of COVID-19 within the city of Marfa, with five (5) active cases and twenty-one (21) recovered cases; and

WHEREAS, as of September 8, 2020, there have been a total of 36 confirmed cases of COVID-19 within the City of Marfa, with 5 active cases and 31 recovered cases; and

WHEREAS, the City of Marfa is an international tourist destination with very limited medical facilities and no hospital, with the closest hospital being 26 miles away in Brewster County; and

WHEREAS, emergency measures are therefore necessary to protect the health and welfare of Marfa residents from the spread of COVID-19, especially for the elderly and compromised individuals who are at highest risk; and

WHEREAS, pursuant to Texas Health and Safety Code §121.003(a), the governing body of a municipality may enforce any law that is reasonably necessary to protect public health; and

WHEREAS, on June 17, 2020, Bexar County Judge Nelson Wolff issued an Executive Order requiring all commercial establishments in Bexar County to develop and implement a Health and Safety Policy that requires, at a minimum, that all employees or visitors to the commercial entity's business premises or other facilities wear face coverings when in an area or performing an activity which will necessarily involve close contact or proximity to co-workers or the public where six feet of separation is not feasible; and

WHEREAS, Governor Abbott has stated on the record that the Bexar County Judge's Executive Order is "not inconsistent" with his Executive Orders and that he supports this approach; and

WHEREAS, on July 2, 2020, Governor Abbott enacted Executive Order GA-29, requiring all individuals to wear face coverings in public places in Texas, subject to certain exemptions; and

WHEREAS, in a reversal of policy by Governor Abbott, now a fine may be assessed against an individual or a business in violation of face covering requirements; and

WHEREAS, the Marfa City Council hereby continues the state of emergency and local disaster due to public health emergency, under their emergency powers granted under Chapter 418 of the Texas Government Code; and

WHEREAS, on June 18, 2020, the Marfa City Council unanimously passed Ordinance No. 2020-10 requiring businesses to develop, post, and implement Health and Safety Policies that require, at a minimum, that all employees and visitors to the business must wear protective face coverings, with an effective date of noon on June 22, 2020 and an enforcement date of June 27, 2020; and

WHEREAS, the Marfa City Council also called for a Public Hearing on Ordinance 2020-10 at 5:30 p.m. on June 25, 2020; and

WHEREAS, after the Public Hearing, the Marfa City Council made various adjustments to Ordinance 2020-10 based on public input and recommendations of staff; and

WHEREAS, the face covering requirements and exceptions in Executive Order GA-29 have been added to this Second Amended Ordinance; and

WHEREAS, the surge of COVID-19 cases in the U.S. has once again resulted in a shortage of medical-grade masks and supplies, so it is necessary to reserve these for medical personnel and first responders, which was addressed in the Second Amended Ordinance; and

WHEREAS, the First Amended Ordinance became effective at 12:01 a.m. on June 26, 2020, and remained in effect until 11:59 p.m. on July 15, 2020, and

WHEREAS, the Second Amended Ordinance became effective at 12:01 a.m. on July 16, 2020 and remained in effect until 11:59 p.m. on August 15, 2020; and

WHEREAS, the Third Amended Ordinance became effective at 12:01 a.m. on July 16, 2020 and shall remain in effect until 11:59 p.m. on September 15, 2020; and

WHEREAS, this Fourth Amended Ordinance became effective at 12:01 on September 16, 2020 and shall remain in effect until 11:59 p.m. on October 15, 2020.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF MARFA, TEXAS:

Effective as of 12:01 a.m. on September 16, 2020 (“Effective Date”), and continuing through 11:59 p.m. on October 15, 2020 unless extended, modified or terminated early by Marfa City Council or by operation of a conflicting Order issued by Presidio County or Governor Abbott, or as otherwise indicated below:

- I. **PUBLIC HEALTH EMERGENCY.** That this Executive Order shall continue the local disaster declaration and public health emergency for City of Marfa for the period specified in this Executive Order and shall incorporate and adopt the most recent Executive Orders GA-28 and 29 issued by Governor Greg Abbott, and any subsequent orders by the Governor relating to addressing the significant and continued rise of COVID-19 cases in Texas.

- II. **GOVERNOR ABBOTT’S EXECUTIVE ORDER GA-29:**
 - A. In accordance with GA-29 issued on July 2, 2020, every person in Texas over the age of 10 is required to wear a face covering over the nose and mouth when inside a commercial entity or other building or space open to the public, or when in an outdoor public space, wherever it is not feasible to maintain six feet of social distancing from another person not in the same household, subject to the following 11 exceptions:
 1. Any person younger than ten (10) years of age;
 2. Any person with a medical condition or disability that prevents wearing a face covering;
 3. Any person while the person is consuming food or drink, or is seated at a restaurant to eat or drink;
 4. Any person while the person is (a) exercising outdoors or engaging in physical activity outdoors, and (b) maintaining a safe distance from other people not in the same household;
 5. Any person while the person is driving alone or with passengers who are part of the same household as the driver;
 6. Any person obtaining a service that requires temporary removal of the face covering for security surveillance, screening, or a need for specific access to

the face, such as while visiting a bank or while obtaining a personal-care service involving the face, but only to the extent necessary for the temporary removal;

7. Any person while the person is in a swimming pool, lake, or similar body of water;
8. Any person who is voting, assisting a voter, serving as a poll watcher, or actively administering an election, but wearing a face covering is strongly encouraged;
9. Any person who is actively providing or obtaining access to religious worship, but wearing a face covering is strongly encouraged;
10. Any person while the person is giving a speech for a broadcast or to an audience; or
11. Any person in a county (a) that meets the requisite criteria promulgated by the Texas Division of Emergency Management (TDEM) regarding minimal cases of COVID-19, and (b) whose county judge has affirmatively opted-out of this face-covering requirement by filing with TDEM the required face-covering attestation form—provided, however, that wearing a face covering is highly recommended, and every county is strongly encouraged to follow these face-covering standards.

Governor Abbott’s Executive Orders, including GA-29, can be found here:

<https://lrl.texas.gov/legLeaders/governors/displayDocs.cfm?govdoctypeID=5&governorID=45>

- III. HEALTH AND SAFETY POLICY - Commercial Entities. From the date of this Executive Order, all commercial entities in City of Marfa providing goods or services directly to the public must develop and implement a health and safety policy (“Health and Safety Policy”). The Health and Safety Policy must require, at a minimum, that all employees and visitors to the commercial entity’s business premises or other facilities properly wear face coverings when in an area or performing an activity which will necessarily involve close contact or proximity to co-workers or the public where six feet of separation is not feasible. The Health and Safety Policy required to be developed and implemented by this Ordinance may also include the implementation of other mitigating measures designed to control and reduce the transmission of COVID-19 such as temperature checks or health screenings. Commercial entities must post the Health and Safety Policy required by this Ordinance in a conspicuous location sufficient to provide notice to employees and visitors of all health and safety requirements. Failure to develop, display, and implement the Health and Safety Policy required by this Ordinance may result in a fine not to exceed \$1,000 for each violation.

For purposes of this Ordinance, Commercial Entities include all businesses that provide goods and/or services to the public, regardless of classification, corporate structure, or non-profit status.

IT IS STRONGLY RECOMMENDED THAT INDIVIDUALS DO NOT OBTAIN NEW MEDICAL MASKS OR N-95 RESPIRATORS AS THEY ARE A NEEDED RESOURCE FOR HEALTH CARE PROVIDERS AND FIRST RESPONDERS, AND THERE IS CURRENTLY ANOTHER NATIONWIDE SHORTAGE DUE TO THE INCREASE IN COVID-19 CASES.

Our healthcare workers and first responders on the front-line combating COVID-19 must have priority access to medical masks or other personal protective equipment.

It is recommended that individuals wear at least two-ply cloth face coverings with filter inserts. Although less effective, face coverings may also include homemade masks, scarfs, bandanas, or a handkerchief. City of Marfa residents should continue to maintain social distancing of at least six feet while outside their home. City of Marfa employees are also required to wear face coverings under the same circumstances as the general public.

Face coverings do not need to be worn in the eleven circumstances set out in GA-29, which are set out in II. above:

Please note that face coverings are a secondary strategy to other mitigation efforts. Face coverings are not a replacement for social distancing, frequent handwashing, and self-isolation when sick. All people should follow CDC recommendations for how to wear and take off a mask. Residents should keep up the following habits while in public:

- washing hands before you leave home and when you return,
- staying at least six feet away from others,
- avoiding touching nose or face,
- not using disposable masks more than three times, and
- washing reusable cloth masks regularly to prevent the spread of the virus.

IV. ENFORCEMENT: PENALTY FOR VIOLATIONS.

A. COMMERCIAL ENTITIES:

In accordance with Texas Government Code §418.173, any Commercial Entity that knowingly or intentionally violates this Ordinance commits an offense, punishable by a fine up to \$1,000.00 per violation.

In order to remain in compliance, a Commercial Entity shall develop, post, and implement a Health and Safety Policy consistent with this Ordinance. If any individual seeking to do business with the Commercial Entity refuses to wear a face covering, then the Commercial Entity may contact the Marfa Police Department to report a violation. The Commercial Entity may also refuse to do business with the individual(s) and may request that the individual(s) leave the premises.

B. INDIVIDUALS:

In accordance with GA-29, following a verbal or written warning for a first-time violator of the face-covering requirement, a person's second violation shall be punishable by a fine not to exceed \$250.00. Each subsequent violation shall be punishable by a fine not to exceed \$250.00 per violation.

- V. **SEVERABILITY.** The sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable and if any phrase, clause, sentence, paragraph or section of this Ordinance should be declared invalid by the final judgment or decree of any court or competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections that can be given effect without the invalid provision, and to this end, the provisions of this Ordinance are severable.
- VI. **INTERPRETATION AND ADDITIONAL TERMS.** To the greatest extent possible, this Ordinance shall be interpreted as consistent with and supplemental to any executive order issued by the Texas Governor. All provisions of the executive orders of the Texas Governor either existing or as, if and when issued, which are made applicable to all jurisdictions by law shall be automatically incorporated into and constitute terms of this Ordinance, enforceable as if set forth herein without necessity for the issuance of any further orders.

Ordinance No. 2020-10 was ORDAINED, ORDERED, PASSED, AND APPROVED by the Marfa City Council on the 18th day of June, 2020.

First Amended Ordinance No. 2020-10A was ORDAINED, ORDERED, PASSED, AND APPROVED by the Marfa City Council on the 25th day of June, 2020.

Second Amended Ordinance No. 2020-10-2A was ORDAINED, ORDERED, PASSED, AND APPROVED by the Marfa City Council on this the 14th day of July, 2020 by a vote of 5 Ayes and 0 Nays.

Third Amended Ordinance No. 2020-10-3A was ORDAINED, ORDERED, PASSED, AND APPROVED by the Marfa City Council on this the 11th day of August, 2020 by a vote of 5 Ayes and 0 Nays.

Authorization and signatures follow on page 7.

Fourth Amended Ordinance No. 2020-10-4A was ORDAINED, ORDERED, PASSED, AND APPROVED by the Marfa City Council on this the 8th day of September, 2020 by a vote of 5 Ayes and 0 Nays.



Hon. Manuel V. Baeza, Mayor

ATTEST:



Chelsea Smith, City Secretary

APPROVED AS TO FORM:



Teresa L. Todd, City Attorney

