AN EMERGENCY ORDINANCE TO PREVENT THE SPREAD OF COVID-19

WHEREAS, on March 11, 2020, the World Health Organization declared the outbreak of the novel coronavirus, SARS-CoV-2, and the disease it causes, commonly referred to as COVID-19, a pandemic (in this ordinance, this virus and the disease that it causes are referred to as “COVID-19”);

WHEREAS, Town Manager Marc Verniel declared the potential spread of COVID-19 an emergency on March 17, 2020, which declaration was confirmed by the Blacksburg Town Council March 24, 2020;

WHEREAS, on March 12, 2020, Governor Ralph S. Northam issued Executive Order Number Fifty-One (“EO 51”) declaring a state of emergency for the Commonwealth of Virginia because of the COVID-19 pandemic; EO 51 acknowledged the existence of a public health emergency arising from the COVID-19 pandemic and that it constitutes a “disaster” as defined by Virginia Code § 44-146.16 because of the public health threat presented by a communicable disease anticipated to spread;

WHEREAS, COVID-19 spreads person to person and, at this time, it appears that COVID19 is spread primarily through respiratory droplets, which can land in the mouths or noses of people who are nearby or possibly be inhaled into the lungs; spread is more likely when people are in close contact with one another (within about six feet);

WHEREAS, COVID-19 is extremely easy to transmit, can be transmitted by infected people who show no symptoms, and the population has not developed herd immunity;

WHEREAS, at this time, there is no known cure, no effective treatment, no vaccine, and because people may be infected but asymptomatic, they may unwittingly infect others;

WHEREAS, the World Health Organization, the United States Centers for Disease Control and Prevention (“Centers for Disease Control”) and the Virginia Department of Health have identified several behaviors and practices that are fundamental in controlling the spread of COVID-19 in the community: frequently washing hands, sanitizing frequently touched surfaces, wearing a cloth face covering when in public, maintaining a separation of at least six feet between people (“social distancing” or “physical distancing”), limiting the size of gatherings in public places, and limiting the duration of gatherings;

WHEREAS, with respect to people wearing face coverings when in public, current evidence suggests that transmission of COVID-19 occurs primarily between people through direct, indirect, or close contact with infected people through infected secretions such as saliva and respiratory secretions, or through their respiratory droplets, which are expelled when an infected person coughs, sneezes, talks or sings; and some outbreak reports related to indoor crowded spaces have suggested the possibility of aerosol transmission, combined with droplet transmission, for example, during choir practice, in food establishments, or in fitness classes;
WHEREAS, according to the World Health Organization, fabric face coverings, “if made and worn properly, can serve as a barrier to droplets expelled from the wearer into the air and environment,” however, these face coverings “must be used as part of a comprehensive package of preventive measures, which includes frequent hand hygiene, physical distancing when possible, respiratory etiquette, environmental cleaning and disinfection,” and recommended precautions also include “avoiding indoor crowded gatherings as much as possible, in particular when physical distancing is not feasible, and ensuring good environmental ventilation in any closed setting”;

WHEREAS, the World Health Organization advises that people take a number of precautions, including: (i) maintaining social distancing because when someone coughs, sneezes, or speaks they spray small liquid droplets from their nose or mouth which may contain virus, and if other persons are too close, they can breathe in the droplets, including the COVID-19 virus, if the person coughing, sneezing, or speaking has the disease; and (ii) avoiding crowded places because when people are in crowds, they are more likely to come into close contact with someone who has COVID-19 and it is more difficult to maintain social distancing;

WHEREAS, the Centers for Disease Control caution that: (i) the more people a person interacts with at a gathering and the longer that interaction lasts, the higher the potential risk of becoming infected with COVID-19 and COVID-19 spreading; (ii) the higher level of community transmission in the area that a gathering is being held, the higher the risk of COVID-19 spreading during the gathering; and (iii) large in-person gatherings where it is difficult for persons to remain spaced at least six feet apart and attendees travel from outside the local area pose the highest risk of COVID-19 spreading;

WHEREAS, the Centers for Disease Control state that cloth face coverings are strongly encouraged in settings where persons might raise their voice (e.g., shouting, chanting, singing);

WHEREAS, the Centers for Disease Control advise, in restaurants: (i) wearing cloth face coverings when less than six feet apart from other people or indoors; (ii) wearing face coverings as much as possible when not eating; (iii) maintaining a proper social distancing if persons are sitting with others who do not live with the person; and (iv) sitting outside when possible;

WHEREAS, for these and related reasons, the Virginia Department of Health has stated that those businesses that operate indoors and at higher capacity, where physical distancing “recommendations” are not observed, sharing objects is permitted, and persons are not wearing cloth face coverings, create higher risk for the transmission of COVID-19;

WHEREAS, since Governor Northam issued EO 51 on March 13, 2020, he has issued several more Executive Orders jointly with Orders of Public Health Emergency issued by M. Norman Oliver, MD, MA, State Health Commissioner, pertaining to COVID-19; as of the date of adoption of this ordinance, “Executive Order Number Sixty-Seven (2020) and Order of Public Health Emergency Seven, Phase Three Easing of Certain Temporary Restrictions Due
to Novel Coronavirus (COVID-19)” (collectively referred to as “EO 67”), which became effective at 12:00 a.m. on July 1, 2020, and most recently amended October 29, 2020 remains in effect; and

WHEREAS, as of November 8, 2020, the spread of COVID-19 in the Commonwealth, in the New River Health District of which the Town is a member, and in Montgomery County continues to increase;

WHEREAS, the arrival of thousands of students at Virginia Tech for the fall semester has resulted in a dramatic increase in the number of cases, and to continue to prevent the spread of the virus between college students and the general community the Town needs to maintain standards for behavior that are generally consistent with Virginia Tech’s policies;

WHEREAS, on May 26, 2020, Governor Ralph S. Northam issued Executive Order Sixty-Three (“EO 63”) declaring that all patrons of public transportation shall cover their mouth and nose with a face covering;

WHEREAS, EO 63 provided exceptions for persons with health conditions that prohibit wearing a facing covering and persons under ten years of age;

WHEREAS, the exceptions in EO 63 may increase the risk of exposure to COVID-19 for other passengers and bus operators since, in order to accommodate the demand for public transportation, Blacksburg Transit (“BT”) has established passenger limits for buses that may not permit six feet of physical distancing at all times;

WHEREAS, to protect the health and safety of all BT passengers and bus operators it is necessary to prohibit anyone without a face covering from riding on BT services; and

WHEREAS, extending fare free service will also reduce the risk of exposure to COVID-19.

NOW, THEREFORE, BE IT ORDAINED by the Council of the Town of Blacksburg, Virginia, as follows:

Sec. 1. Purpose

For the reasons stated in the recitals, the purpose of this ordinance is to prevent the spread of COVID-19.

Sec. 2. Authority

This ordinance is authorized by § 3.16 of the Town Charter, which enables the Town Council to enact ordinances to “meet a public emergency affecting life, health, property or the public peace.”
Sec. 3. Definitions

The following definitions apply to this ordinance:

A. "Expressive activity" means a non-commercial activity in which a person intends to convey a lawful message through speech or conduct that is likely to be perceived by an observer of the speech or conduct, and includes any lawful public gathering, demonstration, procession, or parade in which the primary purpose is to exercise the rights of free speech or peaceable assembly.

B. "Face covering" means an item normally made of cloth or various other materials with elastic bands or cloth ties to secure over the wearer's nose and mouth in an effort to contain or reduce the spread of potentially infectious respiratory secretions at the source (i.e., the person's nose and mouth). For the purposes of this ordinance, a face shield is considered to be a face covering.

C. "Food establishment" means a food establishment as defined in 12 VAC 5-421-10 and the term includes, but is not limited to, any place where food is prepared for service to the public on or off the premises, or any place where food is served, including restaurants, lunchrooms, short order places, cafeterias, coffee shops, cafes, taverns, delicatessens, dining accommodations of public or private clubs. For purposes of this ordinance, "food establishment" does not include kitchen facilities of hospitals and nursing homes, dining accommodations of public and private schools and institutions of higher education, and kitchen areas of local correctional facilities subject to standards adopted under Virginia Code § 53.1-68.

D. "Gathering" means a planned or spontaneous indoor or outdoor, or both, event with people participating or attending for a common purpose such as a community event, concert, festival, conference, parade, wedding, sporting event, party (including parties at private residences), celebration, and other social events. "Gathering" does not include a place of employment where persons are present to perform their functions of employment, events or activities on the grounds of an institution of higher education or school-owned property that are institution or school related, or persons engaging in religious exercise at their religious institution or other place of religious significance.

E. "Micro-producers" means the retail shop, bar, tasting room, tap-room, restaurant or other similar facility of a microbrewery, microwinery, or microdistillery, in which twenty-five (25) percent or more of the facility's production is sold directly to the consumer on-site.

F. "Public place" means any place other than a person's residence or personal vehicle that is indoors, or the indoor portion of the place, or outdoors where at least six feet of physical distancing between persons not living in the same household cannot be maintained, and generally open to the public including, but not limited to, retail stores, food establishments, theaters, personal care and personal grooming
services, and transportation other than a personal vehicle. “Public place” does not include institutions of higher education and other schools, fitness and other exercise facilities (including outdoor pools), religious institutions, or indoor shooting ranges.

G. “Small brewery” means the retail shop, bar, tasting room, tap-room, restaurant or other similar facility of the small brewery which sells directly to the consumer.

**Sec. 4. Limitation on the Number of Persons at Food Establishments**

A. **Indoor occupancy.** Indoor occupancy at food establishments, micro-producers, and small breweries must not be more than 50 percent of the lowest occupancy load on the certificate of occupancy issued by the Town of Blacksburg. If the building or structure does not have an occupancy load established on a certificate of occupancy issued by the Town of Blacksburg, indoor occupancy must not be more than 50 persons.

B. **Persons at gathering are counted.** Persons participating in or attending a gathering who are indoors count towards the occupancy limits established by this section.

C. **Persons working not counted.** The employees or independent contractors of any food establishment, micro-producer, or small brewery do not count towards the occupancy limits established by this section.

D. **State requirements, recommendations, and guidance.** Except as provided in Sections 4(A), (B), and (C), this section does not affect any requirement, recommendation, or guidance including, but not limited to, those requiring or recommending physical distancing that apply to food establishments, micro-producers, or small breweries established in EO 67, or as it may be further amended or superseded, any Order of Public Health Emergency, any workplace safety regulations, or any other state or federal laws related to the COVID-19 pandemic.

**Sec. 5. Limitation of the Number of Attendees at Gatherings**

A. **Gatherings of more than 50 persons prohibited.** All public and private in-person gatherings of more than 50 persons are prohibited except as provided in Section 5(B).

B. **Gatherings not subject to the 50-person limit.** Section 5(A) does not apply to the following gatherings and, instead, the maximum size for gatherings established in EO 67, or as it may be further amended or superseded, or any Order of Public Health Emergency, applies:

   i. Gatherings for religious exercise including, but not limited to, religious ceremonies.
ii. Wedding ceremonies and wedding receptions.

iii. Expressive activity on a public street, public sidewalk, and spontaneous demonstrations as defined in the Town Code.

C. **Persons working not counted.** Persons working at gatherings, either as employees or independent contractors, do not count towards the limit on the number of persons at a gathering.

D. **State requirements, recommendations, and guidance.** Except as provided in Sections 5(A), (B), and (C), this Section does not affect any requirement, recommendation, or guidance including, but not limited to, those requiring or recommending physical distancing, that apply to gatherings established in EO 67, or as it may be further amended or superseded, any Order of Public Health Emergency, any workplace safety regulations, or any other State or federal laws related to the COVID-19 pandemic.

**Sec. 6. Face Coverings**

A. **Face coverings required.** Face coverings must be worn by all persons in public places except as provided in Sections 6 (B) and (C). Notice of this face covering requirement must be prominently posted on the entrance to all establishments open to the public, including, but not limited to, retail stores, food establishments, theaters, personal care and personal grooming services.

B. **Persons not required to wear face coverings.** Face coverings are not required to be worn by the following persons:

   i. Children. Children 10 years of age and under.

   ii. Persons for whom wearing a face covering poses a substantial mental or physical health, safety, or security risk such as persons who have trouble breathing or are unconscious, incapacitated, or otherwise unable to remove the face covering without assistance. Retail stores and food establishments should attempt to provide goods and services outside of the establishment for such persons.

   iii. Certain employees. On-duty employees of the public place for which workplace safety regulations promulgated by the State Safety and Health Codes Board, or face covering rules established by an applicable Executive Order of the Governor or an Order of Public Health Emergency by the State Health Commissioner, apply.
C. **Circumstances when face coverings are not required to be worn by any persons.** Face coverings are not required to be worn by persons in the following circumstances:

i. **Outdoor activities.** While persons are engaged in outdoor activities in public places such as parks and other open spaces, provided that minimum physical distancing established by any applicable Executive Order of the Governor or Order of Public Health Emergency of the State Health Commissioner is maintained.

ii. **Eating or drinking.** While a person is eating food or drinking a beverage.

iii. **End of waiver of Virginia Code § 18.2-422.** When the waiver of Virginia Code § 18.2422, currently established in EO 67, Section (C)(3), or as it may be further amended or superseded, ends.

D. **Responsibility of adults accompanying minors.** Adults accompanying minors between the ages of 10 years old and 17 years old must attempt to prompt the minor to wear face coverings while in public places.

**Sec. 7. Time Limitations**

No food establishment, micro-producer, or small brewery shall be open to the public after midnight. This does not prevent take-out or delivery sales.

This section does not affect any requirement, recommendation, or guidance including, but not limited to, those requiring or recommending physical distancing, that apply to gatherings established in EO 67, or as it may be further amended or superseded, any Order of Public Health Emergency, any workplace safety regulations, or any other state or federal laws related to the COVID-19 pandemic. Nor does this section affect any state law or regulation governing the sale of alcoholic beverages.

**Sec. 8. Emergency Measures Affecting Blacksburg Transit**

A. That Blacksburg Transit's emergency policy requiring face coverings on buses, as set forth below, is approved:

i. passengers and operators are required to wear face coverings;

ii. a passenger who claims to be unable to wear a face covering due to a medical condition will not be forced to wear one but will be requested to wear a face shield; and
iii. if a passenger refuses to wear a face shield, the passenger will not be allowed to ride. If a passenger has entered a bus without a face covering and refuses to wear a face covering, the passenger will be requested to leave the bus and will be considered to be trespassing if he or she does not leave.

B. That the Town Manager is authorized to suspend Blacksburg Transit fares during the time this ordinance is in effect.

Sec. 9. Effect of More Restrictive Executive Order or Order of Public Health Emergency

Sections 4, 5, 6, 7 or 8 do not apply when a more restrictive requirement in an Executive Order or an Order of Public Health Emergency is in effect.

Sec. 10. Penalties

A. Penalty for violation of Sections 4 or 7. A violation of Section 4 or Section 7 by the owner of the food establishment, micro-producer, or small brewery and any manager or assistant manager, however titled, responsible for the operation and management of the food establishment, micro-producer, or small brewery, after first being warned by a law enforcement officer to lower the establishment's occupancy, is punishable as a Class 3 misdemeanor. Section 4(D) is not enforced pursuant to this ordinance.

B. Penalty for violation of Section 5. A violation of Section 5 by the owner or tenant of the private property on which the gathering is located, after first being warned by a law enforcement officer to disperse the gathering, is punishable as a Class 3 misdemeanor. A violation of Section 5 by any person attending the gathering, after first being warned by a law enforcement officer to disperse from the gathering because it exceeds the limitation for a gathering and having failed to disperse after a reasonable period of time not to exceed two minutes, is punishable as a Class 4 misdemeanor. Section 5(D) is not enforced pursuant to this ordinance.

C. Penalty for violation of Section 6. A violation of Section 6 by any person subject to its requirements, after first being warned by a law enforcement officer to apply a face covering, is punishable as a Class 4 misdemeanor. No person under the age of 18 years old is subject to a criminal penalty for failing to wear a face covering.

D. Injunctive relief. The Town, the Town Council, and any Town officer authorized by law may seek to enjoin the continuing violation of any provision of this ordinance by bringing a proceeding for an injunction in any court of competent jurisdiction.
Sec 11. Duration

This ordinance is effective 12:00 a.m., November 11, 2020 and expires at 11:59 p.m. on the ninety-first day afterwards unless amended or reenacted by the Blacksburg Town Council.

Sec. 12. Effect of this Ordinance on the Powers of the Director of Emergency Management

This ordinance does not affect the powers of the Town Manager pursuant to Virginia Code § 44-146.21 during the COVID-19 disaster.

Sec. 13. Severability

It is the intention of the Town Council that any part of this ordinance is severable. If any part is declared unconstitutional or invalid by the valid judgment or decree of a court of competent jurisdiction, the unconstitutionality or invalidity does not affect any other part of this ordinance.

That an emergency is deemed to exist and that this ordinance shall be effective upon its adoption.

ATTEST:

Donna Booe-Caldwell
Town Clerk

Date: November 10, 2020

APPROVED AS TO CONTENT:

Town Manager

APPROVED AS TO LEGAL SUFFICIENCY:

Town Attorney