

University of South Carolina Upstate Faculty Senate Resolution for a Safe Return to Campus¹

Approved by Faculty Senate, August 20, 2021

WHEREAS, the University of South Carolina Upstate strategic plan states that the University intends to be the institution of choice for faculty, staff, students, and the community, and, pursuant to this goal, that the University has a responsibility to advance the principles of wellness, equity, and civility; and,

WHEREAS, USC Upstate expresses as some of its core values the principles that people come first, that we will always do the right thing, and that integrity drives our daily activities; and,

WHEREAS, the Faculty Senate recognizes strong faculty concerns over the health, safety, and well-being of all students, staff, and faculty, specifically as they relate to low vaccination rates, the emergence and increased transmissibility of the Delta variant, and the need to stem the rising spread of COVID-19 throughout our community; and,

WHEREAS, the Faculty Senate recognizes the Center for Disease Control (CDC) as a well-respected authority regarding safety protocols to be implemented to stem or stop the spread of COVID-19 in our community; and,

WHEREAS, the 2019 Novel Coronavirus (“COVID-19”) pandemic is a public health crisis which continues to threaten our community; and,

WHEREAS, the Faculty Senate recognizes that the COVID-19 pandemic, and particularly the rise of the Delta variant, presents a constantly changing situation in which it may be advisable to authorize shifts in course modalities in Fall 2021; and,

WHEREAS, the design and furnishing of most campus classrooms make social distancing or separation of students based on masking preference impossible in classes filled to capacity; and,

WHEREAS, by “Title 44: Health” of the South Carolina Code of Laws, the South Carolina legislature has invested the South Carolina Department of Health and Environmental Control with broad and uncontested powers in emergency circumstances created by the outbreak of communicable diseases; and,

WHEREAS, the Centers for Disease Control and Prevention and the South Carolina Department of Health and Environmental Control have promulgated guidance encouraging mask use for vaccinated and unvaccinated individuals in indoor settings, and Section 3 of DHEC’s July 23, 2021 “Guidance for Institutions of Higher Education (IHEs)” states that “Consistent and correct use of masks” is a “key prevention strategy”; and,

WHEREAS, the South Carolina General Assembly has passed Budget Proviso 117.190 (GP: Masks at Higher Education Facilities) restricting institutions from using appropriated or authorized funds to require students to have had the COVID-19 vaccination in order to be present without being required to wear a facemask; and,

WHEREAS, a policy of universal masking would not allow for exceptions in the case of vaccination; and,

WHEREAS, the Supreme Court of South Carolina has ruled that a policy of universal masking for all vaccinated and unvaccinated persons at USC Upstate does not violate Budget Proviso 117.190 by requiring students to have had the COVID-19 vaccination in order to be present without being required to wear a facemask; and,

WHEREAS, the South Carolina General Assembly has passed Budget Proviso 117.163 (GP: COVID-19 Proof of Vaccination Restriction – Institutions) prohibiting proof of COVID-19 vaccination as a condition of enrollment; and,

¹ We freely acknowledge that this document adapts—and in many places replicates—language from resolutions issued by the Faculty Senates at USC and CCU.

WHEREAS, a policy of universal masking would not violate Proviso 117.163 in that it does not constitute a vaccination mandate; and,

WHEREAS, the Governor of the State of South Carolina has issued Executive order 2021-23 encouraging mask usage; and,

WHEREAS, despite Section 13 of CHAPTER 61. Department of Health and Environmental Control SECTION 20 of the South Carolina Code of Regulations which permits cities and counties to make “such health laws as they may think necessary for the preservation of public health; provided that said laws are not inconsistent with the laws approved by the Board of Health and Environmental Control,” the Governor of the State of South Carolina has issued Executive order 2021-23 prohibiting counties, municipalities, or other political subdivisions from enacting mask mandates; and,

WHEREAS, the Governor of the State of South Carolina has issued Executive order 2021-23 stating “This Section shall not . . . prohibit . . . guidelines regarding the use of Face Coverings by its employees or in government offices, buildings, and facilities, that are consistent with guidance from DHEC or from implementing appropriate measures or undertaking efforts to “reasonably adhere[] to public health guidance” for the purposes of the South Carolina COVID-19 Liability Immunity Act (R-39, S. 147); and,

WHEREAS, the South Carolina General Assembly has passed the South Carolina COVID-19 Liability Immunity Act (R-39, S. 147) providing immunity from claims of COVID-19 related damage; and, this liability protection is in effect so long as a covered entity adheres to public health guidance applicable at the time; and,

WHEREAS, the Southern Association of Colleges and Schools’ standard 13.8 establishes an institution’s responsibility to “take reasonable steps to provide a healthy, safe, and secure environment for all members of the campus community”; and,

WHEREAS, the American College Health Association, The American Council on Education, The American Association of State Colleges and Universities, The National College Athletic Association, and the Phi Beta Kappa Society, among a group of 29 higher national education organizations has resolved that state efforts to restrict COVID-19 mitigation strategies by universities and colleges “undermine the ability of all organizations, including colleges and universities, to operate safely and fully at a time of tremendous unpredictability [and] prohibit higher education institutions from taking responsible and reasonable public health measures and ultimately threaten the health and safety of students, faculty, staff, and neighboring communities; and,

WHEREAS the AAUP-SC has urged Governor McMaster to permit all public institutions of higher education the flexibility to determine appropriate measures to protect the health of those who work and study at those institutions, a message supported by the national AAUP; and,

WHEREAS the South Carolina Supreme Court ruled in *Creswick v. University of South Carolina* that South Carolina state law does not prohibit universal mask mandates; and,

WHEREAS the CDC indicates that while the vaccine is effective, there is still the possibility of breakthrough infections and spread of COVID-19 by vaccinated people; and,

WHEREAS, the Faculty Senates of the University of South Carolina and Coastal Carolina University have similarly urged their respective administrations to take immediate action to implement and maintain mask requirements and mandatory COVID-19 testing;

Therefore, BE IT RESOLVED that the Faculty Senate of USC Upstate:

1. Strongly supports the University Administration in defending USC Upstate's right and responsibility to protect students, staff, and faculty.
2. Does not discern a conflict between existing state law and the adoption of a universal mask requirement for indoor and some outdoor activities on campus, and rather, finds a mask requirement necessary and prudent to protect the safety of our community.
3. Expresses deep gratitude to the University Administration for implementing a universal mask mandate on campus and strongly encourages this Administration to retain, until changes in CDC guidelines suggest it is no longer advisable, the policy issued on August 18, 2021 of universal masking in all indoor spaces on campus, including the Library and cafeteria, with the exception of private residence hall rooms, private offices and workspaces, or while actively eating or drinking inside campus dining facilities, and that the University Administration develop and implement a plan to enforce the mask mandate in the Library and to actively safeguard our Librarians.
4. Strongly encourages the University Administration to require students, faculty, and staff (with the exception of faculty and students who work and study 100% virtually) to undergo free weekly testing for COVID-19 regardless of vaccination status.
5. Strongly encourages the University Administration to indicate a clear procedure for faculty to report students who refuse to wear masks in the classroom and other common spaces to the Dean of Students for discussion of appropriate student conduct on campus.
6. Strongly encourages the University Administration to further mitigate airborne transmission by supplying n95 masks to faculty and staff (with the exception of staff who work outdoors or alone in offices) and by adopting classroom protocols from the Johns Hopkins Bloomberg School of Public Health Center for Public Security: minimum MERV 13 HVAC filters; portable HEPA air filtration units in each classroom, and CO2 monitors in each classroom—supplies that can likely be purchased with Higher Education Emergency Relief (HEERF) funds; and,
7. Strongly encourages the University Administration to develop and authorize reasonable accommodations to safeguard the health of the faculty, including but not limited to modified duties, section changes, and instruction modality changes. Specifically, we ask that the University Administration allow faculty members to deliver face-to-face courses in hybrid format, permitting students to access the classroom from remote locations at will in order to provide flexible instruction to students who need or want virtual access and to reduce density in the classroom, and that the Administration provides sufficient technology and IT support for widespread hybrid teaching. Furthermore, we ask University Administration to permit faculty members to switch instruction modality from face-to-face to virtual synchronous course delivery under any of the following conditions:
 - a. a faculty member is immunocompromised, is in a high-risk category as defined by the CDC, lives in close proximity with a person who is immunocompromised, is a caregiver to anyone who is immunocompromised, or lives with someone medically unable to be vaccinated, including children under twelve, or with someone who is a caregiver to a person in a high-risk category;
 - b. any class member tests positive for COVID-19 during this period of high-transmissibility;
 - c. a student persistently refuses to wear a mask in class, does not respond positively to a conduct meeting with the Dean of Students, and refuses to access the course from a remote location;
 - d. a faculty member tests positive for COVID-19, is quarantining due to exposure to COVID-19, or has children who are quarantining;
 - e. K-12 school, K-12 classroom, or daycare business or classroom closures create new childcare, home-schooling, or e-learning obligations for the faculty member that might otherwise necessitate bringing children to the worksite or filing an FMLA request for relief from teaching mid- semester;
 - f. or a faculty member's child has an illness (COVID-19 or otherwise) that creates new childcare obligations for the faculty member.
8. Strongly encourages faculty members to include vaccination and vaccine side effects as excused absences.