

CITY COMMISSION AGENDA MEMO
August 11, 2020

FROM: Katie Jackson, City Attorney

MEETING: August 18, 2020

SUBJECT: Ordinance Extending Mask or other Face Covering Requirements through December 31, 2020

PRESENTERS: Katie Jackson, City Attorney
Riley County Police Department

BACKGROUND

The federal, state, and county governments have declared states of emergency related to the spread of the COVID-19, a respiratory disease that has been declared a pandemic by the World Health Organization. The U.S. Center for Disease Control and the Kansas Department of Health and Environment have consistently recommended that wearing a face covering over the nose and mouth can reduce the spread of COVID-19.

Numerous states, counties and cities have issued health orders or adopted laws with various approaches to requiring face coverings in public. On July 2, 2020, Kansas Governor Laura Kelly issued Executive Order No. 20-52, which required face masks in certain circumstances (discussed in detail below) beginning at 12:01 a.m. on July 3, 2020. The Governor's automatically applied in each county, **unless** the County makes certain findings and either overrides or modifies the order.

The Manhattan city limits are located in Riley and Pottawatomie counties. On July 2, the Riley County Board of County Commissioners (BOCC) decided not to act, so the Governor's Order went into effect on July 3 in Riley County. On July 6, the Riley County BOCC overrode the Governor's Order. On July 2, the Pottawatomie County Board of County Commissioners overrode the Governor's Order. The Governor's Order was not in effect in the Manhattan city limits.

A Kansas city may exercise its constitutional home rule authority to adopt an ordinance that protects the public's health, safety, and welfare. On July 7, 2020, the City Commission considered and then adopted an ordinance modeled after the Governor's Order, requiring face masks to be worn in certain circumstances in the city limits. The ordinance expires on its terms at 11:59 p.m. on September 7, 2020.

Other Kansas cities, including Wichita, Winfield, Hays and Salina, have also adopted ordinances modeled after the Governor's Order. On July 8, 2020, the Kansas Attorney

General's Office issued a statement that mask ordinances are constitutional. "To the best of our knowledge, the Legislature has not enacted state law that prohibits cities from enacting local ordinances that regulate the wearing of facemasks," Kansas Attorney General's Office spokesman Clint Blaes said in a statement.

DISCUSSION

The adopted City ordinance created new City Code Sections 22-70 through 22-73. The ordinance contains similar findings ("Whereas" clauses); definitions (Sec. 22-70); and requirements and exemptions (Sec. 22-71) as the Governor's Order. Paragraph 6 of the Governor's Order states that a local government can take action that is "equally or more restrictive" than the Governor's Order.

A violation of the new City Code provision is an infraction, because there is no corresponding state criminal law. Both the Riley County and KSU Police Departments can enforce violations, which would be prosecuted in the Manhattan Municipal Court. Law enforcement has the discretion to determine their enforcement policies and practices. An individual can be cited for failing to wear a mask when required, and the person responsible for a business/organization can be cited for failing to require employees or customers to wear a mask when required.

Following adoption of the City ordinance, City staff and the Riley County Police Department (RCPD) worked together to publish information and FAQs to the public. The focus has been on education, and RCPD has provided masks to individuals who need one as a community outreach effort. RCPD has responded to approximately 20 complaints, and as of the date of this memo, no citation has been issued for a violation of the mask ordinance. RCPD has not requested any changes to the ordinance at this time, if the City Commission decides to extend it.

Section 22-73 of the City Code sunsets the ordinance at 11:59 p.m. on September 7, 2020, lasting through the end of Labor Day weekend. If the City Commission wants to continue the existing ordinance exactly as previously adopted, the City Commission only needs to amend Section 22-73 to extend the sunset date to the desired new date. Although the full text of the current ordinance has been included for reference, the proposed ordinance only references Section 22-73, because the other provisions will remain the same.

The City Commission previously opted to hold two readings of this ordinance. Riley County declared its emergency through December 31, 2020, which is also the deadline for future reimbursements through SPARKS (Strengthening People and Revitalizing Kansas) funds or FEMA (Federal Emergency Management Agency) for face masks and other PPE (Personal Protective Equipment) expires December 31, 2020. Thus, the first reading of this ordinance includes a new expiration of the mask requirement ordinance at 11:59 p.m. on December 31, 2020. This date also supports K-State and USD 383 for their face covering requirements and potential reimbursements as well as other businesses. This is a placeholder; the City Commission can opt for a different date that would be included in the

second reading if the item proceeds. The City Commission could repeal this early or extend it beyond that date at a future legislative meeting.

FINANCING

Not applicable.

ALTERNATIVES

The City Commission has the following alternatives concerning the matter at hand. The Commission may:

1. Approve first reading of the ordinance.
2. Decline to adopt first reading of the ordinance.
3. Modify the ordinance to meet the City Commission's needs.
4. Table the item.

RECOMMENDATION

The City Commission should consider approving first reading of the proposed ordinance.

POSSIBLE MOTION

Approve first reading of an ordinance amending Section 22-73 of the City Code extending the term of the face mask ordinance requirements until 11:59 p.m. on December 31, 2020.

KJJ/

Enclosures:

1. Adopted Ordinance No. 7488
2. Proposed Ordinance Amending Sec. 22-73 of the City Code

ORDINANCE NO. 7488

AN ORDINANCE CREATING NEW SECTIONS 22-70, 22-71, 22-72, AND 22-73, REQUIRING INDIVIDUALS TO WEAR MASKS OR OTHER FACE COVERINGS IN CERTAIN CIRCUMSTANCES; REQUIRING BUSINESSES AND ORGANIZATIONS TO REQUIRE ALL EMPLOYEES, CUSTOMERS, VISITORS, MEMBERS, OR MEMBERS OF THE PUBLIC TO WEAR A MASK OR OTHER FACE COVERING IN CERTAIN CIRCUMSTANCES; AND ESTABLISHING PENALTIES THEREFORE.

WHEREAS, the governing body of the City of Manhattan prioritizes the protection of the health, safety, welfare and economic well-being of residents and visitors of the City of Manhattan; and,

WHEREAS, the City of Manhattan is facing a crisis with the pandemic and public health emergency of COVID- 19, resulting in illness, quarantines, school closures, and temporary closure of businesses resulting in lost wages and financial hardship; and,

WHEREAS, the United States Department of Health and Human Services declared a public health emergency for COVID-19 beginning January 27, 2020, with now more than 2,580,000 cases of the illness and more than 126,000 deaths as a result of the illness across the United States; and,

WHEREAS, the World Health Organization declared a pandemic on March 11, 2020; and,

WHEREAS, a State of Disaster Emergency was proclaimed for the State of Kansas on March 12, 2020; and,

WHEREAS, on March 13, 2020, the President of the United States declared the ongoing COVID-19 pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, tribes, territories, and the District of Columbia pursuant to Section 50 1 (b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121-5207 (the "Stafford Act"); and,

WHEREAS, on March 13, 2020, the President of the United States pursuant to Sections 201 and 301 of the National Emergencies Act, 50 U.S.C. § 1601, et seq. and consistent with Section 1135 of the Social Security Act, as amended (42 U.S.C. § 1320b-5), declared a national emergency that the COVID-19 outbreak in the United States constitutes a national emergency beginning March 1, 2020; and,

WHEREAS, as of this date, in Kansas, there have been more than 15,919 reported positive cases of COVID- 19 spread among 97 counties, including 277 deaths; and,

WHEREAS, after a steady trend of decreasing metrics, recent weeks have seen the numbers of COVID-19 cases, hospitalizations, and deaths spike in Kansas and across the nation; and,

WHEREAS, this worrying trend of increased COVID-19 spread is a danger to the health and safety of residents and visitors to the City of Manhattan, and also presents a serious threat to reopening and reviving the City's economy; and,

WHEREAS, wearing a mask in public is the easiest and most effective way to protect each other to prevent COVID-19 spread and to help support the mission-readiness of Fort Riley; to provide a safe reopening of Kansas State University and other higher education institutions; and to keep the City's K-12 schools and businesses open, and the economy running; and,

WHEREAS, wearing a mask in public is not only safe and easy, it is necessary to avoid more restrictive local measures that could involve closing higher education institutions, K-12 schools, businesses, organized youth sports, and other important activities; and,

WHEREAS, the City of Manhattan must remain flexible to account for the evolving nature and scope of the unprecedented public health emergency posed by COVID-19, while also simultaneously safely, strategically, and incrementally reopening business and facilitating economic recovery and revitalization; and,

WHEREAS, for the aforementioned and other reasons, the governing body of the City of Manhattan is acting pursuant to its constitutional home rule authority to provide for the health, safety, welfare and economic well-being of residents and visitors of the City of Manhattan, by requiring that masks or other face coverings be worn as described in this ordinance.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF MANHATTAN, KANSAS:

Section 1. That Section 22-70 of the Code of Ordinances of the City of Manhattan, Kansas, is hereby created to read as follows:

Sec. 22-70. Mask or other face coverings; definitions. The following words or phrases when used in this article shall have the following meanings:

- (a) "Mask or other face covering" means a covering of the nose and mouth that is secured to the head with ties, straps, or loops over the ears or is simply wrapped around the lower face. A mask or other face covering can be made of a variety of synthetic and natural fabrics, including cotton, silk, or linen. Ideally, a mask or other face covering has two or more layers. A mask or other face covering may be factory-made, sewn by hand, or can be improvised from household items such as scarfs, bandanas, t-shirts, sweatshirts, or towels.
- (b) "Public space" means any indoor or outdoor space or area that is open to the public; this does not include private residential property or private offices or workspaces that are not open to customers or public visitors.

Section 2. That Section 22-71 of the Code of Ordinances of the City of Manhattan, Kansas, is hereby created to read as follows:

Sec. 22-71. Mask or other face coverings; when required; exemptions.

- (a) All persons in the city shall cover their mouths and noses with masks or other face coverings when they are in the following situations:
 - (1) Inside, or in line to enter, any indoor public space;
 - (2) Obtaining services from the healthcare sector in settings, including but not limited to, a hospital, pharmacy, medical clinic, laboratory, physician or dental office, veterinary clinic, or blood bank, unless directed otherwise by an employee thereof or a health care provider;
 - (3) Waiting for or riding on public transportation or while in a taxi, private car service, or ride-sharing vehicle; or,
 - (4) While outdoors in public spaces and unable to maintain a 6-foot distance between individuals (not including individuals who reside together) with only infrequent or incidental moments of closer proximity.
- (b) The persons responsible for all businesses or organizations in the city must require all employees, customers, visitors, members, or members of the public to wear a mask or other face covering as follows:
 - (1) Employees, when working in any space visited by customers or members of the public, regardless of whether anyone from the public is present at the time;
 - (2) Employees, when working in any space where food is prepared or packaged for sale or distribution to others;
 - (3) Employees, when working in or walking through common areas, such as hallways, stairways, elevators, and parking facilities;
 - (4) Customers, members, visitors, or members of the public, when in a facility managed by the business or organization; or
 - (5) Employees, when in any room or enclosed area where other people (except for individuals who reside together) are present and are unable to maintain a 6-foot distance except for infrequent or incidental moments of closer proximity.
- (c) The following individuals are exempt from wearing masks or other face coverings in the situations described in subsections (a) and (b):
 - (1) Persons age five years or under—children age two years and under in particular should not wear a face covering because of the risk of suffocation;

- (2) Persons with a medical condition, mental health condition, or disability that prevents wearing a face covering—this includes persons with a medical condition for whom wearing a face covering could obstruct breathing or who are unconscious, incapacitated, or otherwise unable to remove a face covering without assistance;
 - (3) Persons who are deaf or hard of hearing, or communicating with a person who is deaf or hard of hearing, where the ability to see the mouth is essential for communication;
 - (4) Persons for whom wearing a face covering would create a risk to the person related to their work, as determined by local, state, or federal regulators or workplace safety guidelines;
 - (5) Persons who are obtaining a service involving the nose or face for which temporary removal of the face covering is necessary to perform the service;
 - (6) Persons who are seated at a restaurant or other establishment that offers food or beverage service, while they are eating or drinking, provided they maintain a 6-foot distance between individuals (not including individuals who reside together or are seated together) with only infrequent or incidental moments of closer proximity;
 - (7) Athletes who are engaged in an organized sports activity that allows athletes to maintain a 6-foot distance from others with only infrequent or incidental moments of closer proximity;
 - (8) Persons who are engaged in an activity that a professional or recreational association, regulatory entity, medical association, or other public-health-oriented entity has determined cannot be safely conducted while wearing a mask or other face covering;
 - (9) Persons engaged in a court-related proceeding held or managed by the Kansas Judiciary; and,
 - (10) Persons engaged in any lawful activity during which wearing a mask or other face covering is prohibited by law.
- (d) It shall be an affirmative defense to any prosecution under subsection (a) or (b) that the person in violation is an individual listed under subsection (c).

Section 3. That Section 22-72 of the Code of Ordinances of the City of Manhattan, Kansas, is hereby created to read as follows:

Sec. 22-72. Mask or other face coverings; penalties; enforcement.

(a) A violation of any provision of Section 22-71 shall be punished as follows:

- (1) For a first conviction, the person shall be punished with a fine of \$5.
 - (2) For a second conviction, the person shall be punished with a fine of \$10.
 - (3) For a third or subsequent conviction, the person shall be punished by a fine of \$20.
- (b) The person responsible for any business or organization that does not comply with Section 22-71(b) includes a sole proprietor, or any officer, partner, member, manager, director, or other supervisor for the business or organization, who may be held jointly and severally responsible for such violation with respect to any enforcement of the violation.

Section 3. That Section 22-73 of the Code of Ordinances of the City of Manhattan, Kansas, is hereby created to read as follows:

Sec. 22-73. Mask or other face coverings; effective term.

The provisions of Section 22-70 through Section 22-73 of the city code shall be in effect until 11:59 p.m. on September 7, 2020.

Section 4. Effective Date. This ordinance shall take effect upon publication in the official city newspaper.

**PASSED BY THE GOVERNING BODY OF THE CITY OF MANHATTAN, KANSAS,
THIS 7TH DAY OF JULY, 2020.**



Usha Reddi, Mayor

ATTEST:



Brenda K. Wolf, CMC, City Clerk



ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 22-73 OF THE CITY CODE, EXTENDING THROUGH DECEMBER 31, 2020, THE REQUIREMENTS FOR INDIVIDUALS TO WEAR MASKS OR OTHER FACE COVERINGS IN CERTAIN CIRCUMSTANCES AND FOR BUSINESSES AND ORGANIZATIONS TO REQUIRE ALL EMPLOYEES, CUSTOMERS, VISITORS, MEMBERS, OR MEMBERS OF THE PUBLIC TO WEAR A MASK OR OTHER FACE COVERING IN CERTAIN CIRCUMSTANCES.

WHEREAS, the governing body of the City of Manhattan prioritizes the protection of the health, safety, welfare and economic well-being of residents and visitors of the City of Manhattan; and,

WHEREAS, the City of Manhattan is facing a crisis with the pandemic and public health emergency of COVID- 19, resulting in illness, quarantines, school closures, and temporary closure of businesses resulting in lost wages and financial hardship; and,

WHEREAS, the United States Department of Health and Human Services declared a public health emergency for COVID-19 beginning January 27, 2020, with now more than 2,580,000 cases of the illness and more than 126,000 deaths as a result of the illness across the United States; and,

WHEREAS, the World Health Organization declared a pandemic on March 11, 2020; and,

WHEREAS, a State of Disaster Emergency was proclaimed for the State of Kansas on March 12, 2020; and,

WHEREAS, on March 13, 2020, the President of the United States declared the ongoing COVID-19 pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, tribes, territories, and the District of Columbia pursuant to Section 50 1 (b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121-5207 (the "Stafford Act"); and,

WHEREAS, on March 13, 2020, the President of the United States pursuant to Sections 201 and 301 of the National Emergencies Act, 50 U.S.C. § 1601, et seq. and consistent with Section 1135 of the Social Security Act, as amended (42 U.S.C. § 1320b-5), declared a national emergency that the COVID-19 outbreak in the United States constitutes a national emergency beginning March 1, 2020; and,

WHEREAS, as of this date, in Kansas, there have been more than 32,099 reported positive cases of COVID- 19 spread throughout the State, including 387 deaths; and,

WHEREAS, after a steady trend of decreasing metrics, recent weeks have seen the numbers of COVID-19 cases, hospitalizations, and deaths spike in Kansas and across the nation; and,

WHEREAS, this worrying trend of increased COVID-19 spread is a danger to the health and safety of residents and visitors to the City of Manhattan, and also presents a serious threat to reopening and reviving the City's economy; and,

Commented [K1]: Will update for 2nd reading

Commented [K2]: Will update for 2nd reading

WHEREAS, wearing a mask in public is the easiest and most effective way to protect each other to prevent COVID-19 spread and to help support the mission-readiness of Fort Riley; to provide a safe reopening of Kansas State University and other higher education institutions; and to keep the City's K-12 schools and businesses open, and the economy running; and,

WHEREAS, wearing a mask in public is not only safe and easy, it is necessary to avoid more restrictive local measures that could involve closing higher education institutions, K-12 schools, businesses, organized youth sports, and other important activities; and,

WHEREAS, the City of Manhattan must remain flexible to account for the evolving nature and scope of the unprecedented public health emergency posed by COVID-19, while also simultaneously safely, strategically, and incrementally reopening business and facilitating economic recovery and revitalization; and,

WHEREAS, for the aforementioned and other reasons, the governing body of the City of Manhattan is acting pursuant to its constitutional home rule authority to provide for the health, safety, welfare and economic well-being of residents and visitors of the City of Manhattan, by requiring that masks or other face coverings be worn as described in this ordinance.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF MANHATTAN, KANSAS:

Section 1. That Section 22-73 of the Code of Ordinances of the City of Manhattan, Kansas, is hereby created to read as follows:

Sec. 22-73. Mask or other face coverings; effective term.

The provisions of Sections 22-70 through Section 22-73 of the city code shall be in effect until 11:59 p.m. on December 31, 2020.

Section 2. Effective Date. This ordinance shall take effect upon publication in the official city newspaper.

PASSED BY THE GOVERNING BODY OF THE CITY OF MANHATTAN, KANSAS, THIS ____ DAY OF AUGUST, 2020.

Usha Reddi, Mayor

ATTEST:

Brenda K. Wolf, CMC, City Clerk