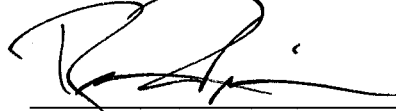


MOTION BY COUNCILMEMBER _____

I hereby move that Ordinance No. 42310 on the September 1, 2020 Agenda of the City Council, be amended in the whole by deleting it in its entirety and substituting, in lieu thereof, the attached Ordinance.

APPROVED AS TO FORM:



ASSISTANT CITY ATTORNEY

08/27/2020

DATE

ORDINANCE NO. _____

AN ORDINANCE to amend Chapter 12, Article III, entitled "Prevention of COVID-19," Sections 12-41 through 12-52, of the Omaha Municipal Code; to establish minimum size and font requirements for the notice contained therein, to add an exception for individuals engaged in a team sports activity, and to extend the sunset provision of this Article; and to provide the effective date thereof.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OMAHA:

Section 1. That, as a result of Novel Coronavirus (COVID-19) pandemic and with continued community transmission of confirmed COVID-19 cases within the City limits of the City of Omaha, a danger to the public health, safety, and welfare continues to exist within the City of Omaha. This ordinance seeks to amend the requirements contained herein on the imposition a non-pharmaceutical intervention to combat the spread of COVID-19 and to halt the progression thereof.

Section 2. That Chapter 12, Article III, Section 12-41 through Section 12-52 of the Omaha Municipal Code are hereby amended as follows:

ARTICLE III. – PREVENTION OF COVID-19

Sec. 12-41. – Legislative Findings and Intent.

- (1) The City Council hereby finds and declares, based upon the scientific and medical evidence before it, that:
 - (a) the Novel Coronavirus (COVID-19) has impacted and continues to dramatically impact the citizens of the City of Omaha, Nebraska; and
 - (b) exposure to COVID-19 presents a risk of death or serious long-term disability; the exposure is widespread and poses significant risk of harm, including death, to people in the general population of the City of Omaha; there is a particular subset of the population that is more vulnerable to the threat and thus at an increased risk; and the threat is from a novel infectious disease; and

- (c) information from the World Health Organization, the CDC, Nebraska Department of Health and Human Services, the Douglas County Health Department, local public health departments throughout Nebraska, and members of the City of Omaha and Douglas County medical community indicates that citizens of the City of Omaha have been and will continue to be exposed due to community transmissions of COVID-19; and
- (d) the manner in which the spread of COVID-19 cases in the City of Omaha has occurred creates an unacceptable risk to the health, safety, and welfare of the citizens of the City of Omaha; and
- (e) the number of COVID-19 infections within the City of Omaha continues to increase; and
- (f) COVID-19 constitutes a public nuisance and a threat to the health, safety, and welfare of the City of Omaha; and
- (g) The Director of the United States Centers for Disease Control and Prevention (CDC), the Health Director for the City of Omaha, doctors and infectious disease experts from the University of Nebraska Medical Center and Nebraska Medicine, as well as the Metro Omaha Medical Society, have concluded that the wearing of face coverings by every individual while in public is one of the best methods to slow and stop the spread of COVID-19; and
- (h) the wearing of face coverings by every individual while indoors in public places in the City of Omaha will reduce community transmissions of COVID-19, resulting in fewer deaths, serious health complications, and will ease the strain on hospitals and other medical offices and facilities; and
- (i) the wearing of face coverings by every individual while indoors in public places in the City of Omaha will help keep businesses open and operating, encouraging economic growth and preventing prolonged economic harm; and
- (j) it is just and proper for the City Council to exercise the authority granted to it by the Home Rule Charter of the City of Omaha and Nebraska statutes in furtherance of protecting the public health, safety, and welfare.

Sec. 12-42. – Definitions.

For purposes of this Article, the following terms are defined as follows:

- (1) **Face Covering.** – A face covering is defined as a covering which, when worn properly, must cover the nose and mouth completely and can include a paper or disposable face mask, a cloth face mask, a scarf, a bandanna, a neck gaiter, or a religious face covering. Medical-grade masks and respirators are sufficient face coverings, but to preserve adequate supplies, their purchase and use is discouraged for those who do not work in a health care setting or in other occupations that require medical-grade personal protective equipment. Masks that incorporate a valve designed to facilitate easy exhaling, mesh masks, or masks with openings, holes, visible gaps in the design or material, or vents are

not sufficient face coverings because they allow exhaled droplets to be released into the air.

- (2) **Premises That Are Open to the General Public.** – Premises that are open to the general public are broadly defined to include entities that employ or engage workers, including private-sector entities, public-sector entities, non-profit entities, regular commercial or business establishments, private clubs, religious centers or buildings, public transportation (including buses, taxis, ride-sharing vehicles, or vehicles used for business purposes), and any place which is generally open to the public, including educational institutions and daycare facilities.

Sec. 12-43. – Individual Facial Coverings Required.

All individuals age five (5) and older shall wear a face covering over their mouth and nose while indoors in a premises that is open to the general public including, but not limited to, educational institutions, unless the individual maintains a minimum of six (6) feet of separation or social distance at all times from anyone who is not a member of the individual's household, except face coverings will not be required if the individual:

- (1) is seeking federal, state, county, or city governmental services;
- (2) is seated at a bar or restaurant to eat or drink, or while immediately consuming food or beverages;
- (3) is engaged in an occupation preventing the wearing of a face covering;
- (4) is obtaining a service or purchasing goods or services that requires the temporary removal of the face covering;
- (5) is asked to remove a face covering to verify an identity for lawful purposes;
- (6) is providing a speech, lecture, or broadcast to an audience so long as six (6) feet of distancing from other individuals is maintained; or
- (7) cannot otherwise wear a face covering because of a medical condition, a mental health condition, or a disability that makes it unreasonable for the individual to wear a face covering.

Nothing in this section shall prohibit the owner or person in charge of a premises that is open to the general public from requiring an individual to wear a face covering during any of the circumstances enumerated above or from implementing a more restrictive face covering policy.

Sec. 12-44. – Premises That Are Open to the Public – Duty to Require Facial Coverings.

Any individual or entity which maintains premises that are open to the general public including, but not limited to, educational institutions, shall require all individuals age five (5) and older to wear a face covering over their mouth and nose while indoors in said premises, unless the individual maintains a minimum of six (6) feet of separation or social distance at all times from anyone who is not a member of the individual's household, except face coverings will not be required if the individual:

- (1) is seeking federal, state, county, or city governmental services;
- (2) is seated at a bar or restaurant to eat or drink, or while immediately consuming food or beverages;
- (3) is engaged in an occupation preventing the wearing of a face covering;
- (4) is obtaining a service or purchasing goods or services that requires the temporary removal of the face covering;
- (5) is asked to remove a face covering to verify an identity for lawful purposes;
- (6) is providing a speech, lecture, or broadcast to an audience so long as six (6) feet of distancing from other individuals is maintained; or
- (7) cannot otherwise wear a face covering because of a medical condition, a mental health condition, or a disability that makes it unreasonable for the individual to wear a face covering.

Nothing in this section shall prohibit the owner or person in charge of a premises that is open to the general public from requiring an individual to wear a face covering during any of the circumstances enumerated above or from implementing a more restrictive face covering policy.

Sec. 12-45. – Notice of Face Covering Requirements.

Any individual or entity which maintains premises that are open to the general public, including but not limited to educational institutions, must post one or more signs that are visible to all persons – including workers, customers, and visitors – instructing them to wear face coverings as required by this Article. The signs required by this Section must be printed on a poster or paper that is a minimum size of 8.5 inches by 11 inches, and be written or typed in a legible font or typeface that is no smaller than 12 points of leading or 12-point type.

Sec. 12-46. – Exceptions.

The provisions of this Article shall not apply to:

- (1) Courts of law; public utilities or federal, state, county, or city operations; medical providers, facilities, or pharmacies; congregate living centers or facilities; group homes and residential drug and/or mental health treatment facilities; shelters; airport travel; election offices; polling places on an election day; or to residential dwelling units.
- (2) Children under the age of five (5). While children ages three (3) and four (4) may wear a face covering if that child can remove the face covering without assistance, guidance from the CDC states that children two (2) years old and under should never wear a face covering due to the risk of suffocation.
- (3) Federal and state activities. Nothing in this Article shall be construed to limit, prohibit, or restrict in any way the operations of the federal or state government or the movement of federal or state officials in the city while acting in their official capacity, including federal and state judicial, legislative, and executive staff and personnel.

- (4) Individuals at their workplace when wearing a face covering would create a job hazard for the individual or others, as determined by federal, state, or local regulators or workplace safety and health standards and guidelines.
- (5) Individuals who are alone in an office, room, a vehicle, the cab of heavy equipment or machinery, or an enclosed work area. In such situations, the individual should still carry a face covering to be prepared for person-to-person interactions and to be used when the individual is no longer alone.
- (6) Individuals who are seated at a desk or standing at a stationary work station, provided that the desk or work station has a solid Plexiglas or plastic barrier installed upon it which cannot be moved.
- (7) Individuals who are officiating at a religious service.
- (8) Individuals communicating with other individuals who are deaf or hard of hearing or who have a disability, medical condition, or mental health condition that makes communication with that individual while wearing a face covering difficult, provided that minimum social distancing of six (6) feet or more is maintained to the extent possible between persons who are not members of the same household.
- (9) Individuals who are engaged in activities, such as swimming or showering, where the face covering will get wet.
- (10) Individuals who are exercising in an indoor business or indoor space such as a gym or fitness center, while the level of exertion makes it difficult to wear a face covering, provided that minimum social distancing of six (6) feet or more is maintained at all times.
- (11) Individuals in an indoor premises that is generally open to the public while playing a musical instrument that cannot be played when a face covering is worn, provided that a minimum social distancing of six (6) feet or more is maintained at all times.
- (12) Individuals actively participating in a team sports activity, while the level of exertion makes it difficult to wear a face covering.
- ~~(12)~~(13) Public safety workers actively engaged in a public safety role, including but not limited to law enforcement personnel, fire fighters, or emergency medical personnel, in situations where wearing a face covering would seriously interfere in the performance of the individual's public safety responsibilities.

Nothing in this section shall prohibit the owner or person in charge of a premises that is open to the general public from requiring an individual to wear a face covering during any of the circumstances enumerated above or from implementing a more restrictive face covering policy.

Sec. 12-47. – Public Nuisance Declared.

Any individual or entity which maintains premises that are open to the general public who fails to comply with the requirements of Section 12-44, above, is hereby declared to be a nuisance and a danger to the public health, safety, and welfare.

Sec. 12-48. – Application.

The provisions of this Article shall only apply to all persons and property within the corporate limits of the City of Omaha and shall not extend into the three (3) mile extraterritorial jurisdiction of the City.

Sec. 12-49. – Penalty.

Any individual or person who is found to have violated any of the provisions of this Article shall be guilty of a misdemeanor for each offense and shall be subjected to a fine of \$25.00. Each instance of violation of this Article may be considered a separate offense.

Sec. 12-50. – Civil Abatement.

In addition to any other penalty sought or obtained under this Article or other applicable law, the City Attorney may institute injunctive or other appropriate civil proceedings necessary to obtain compliance with this Article or to abate any nuisance resulting from violations of this Article.

Sec. 12-51. – Sunset Provision.

The requirements imposed by this Article shall expire and terminate at 11:59 p.m. on ~~September 15,~~ October 20, 2020, unless otherwise extended by ordinance of the City Council.

Sec. 12-52. – Report Required.

The Health Director of the City of Omaha shall, on every Tuesday while the provisions of this Article remain in effect, prepare a report to be delivered to the Mayor and the City Council. The report shall contain information from the prior week on the status of COVID-19 infections in the City of Omaha, and shall include information on the current number of cases in the city, the number of new cases diagnosed, the number of tests performed, the positivity rate of those tests, the number of new deaths that have occurred, the Metro Omaha area hospital occupancy rate, the ventilator utilization rate, the COVID-19 hospitalization rate, a breakdown of cases by zip code, and any such other information that the Health Director deems relevant to the spread of COVID-19 within the City of Omaha.

Section 3. The sections, subsections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable, and if any section, subsection, paragraph, sentence, clause, or phrase of this Ordinance shall be declared invalid, unenforceable, or unconstitutional by the valid judgment or decree of a court of competent jurisdiction, such invalidity, unenforceability, or unconstitutionality shall not affect any of the remaining sections, subsections, paragraphs, sentences, clauses, or phrases of this Ordinance.

ORDINANCE NO. _____
PAGE 7

- 1 Section 5. This Ordinance shall be in full force and take effect 15 days from and after
2 the date of its passage.
3 INTRODUCED BY COUNCILMEMBER

APPROVED BY:

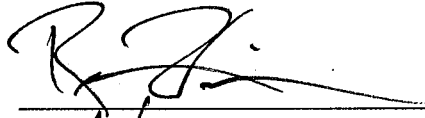
MAYOR OF THE CITY OF OMAHA DATE

PASSED _____

ATTEST:

CITY CLERK OF THE CITY OF OMAHA DATE

APPROVED AS TO FORM:



Ast. CITY ATTORNEY 08/27/2020 DATE

NO. _____

Item Submitted By: _____

Department: _____

Council Meeting Date: _____

AN ORDINANCE to amend Chapter 12, Article III, entitled "Prevention of COVID-19," Sections 12-41 through 12-52, of the Omaha Municipal Code; to establish minimum size and font requirements for the notice contained therein, to add an exception for individuals engaged in a team sports activity, and to extend the sunset provision of this Article; and to provide the effective date thereof.

Presented to City Council

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Elizabeth Butler

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City Clerk