

CITY COMMISSION AGENDA MEMO

July 3, 2020

FROM: Katie Jackson, City Attorney

MEETING: July 7, 2020

SUBJECT: Ordinance No. 7488 Requiring Mask or other Face Covering

PRESENTERS: Katie Jackson, City Attorney
Riley County Police Department
Riley County Health Department
MHK Clinical Task Force

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.

At its May 5, 2020, meeting, Mayor Reddi recommended that the City Commission discuss the possibility of a “mask” (face covering) ordinance to prevent the spread of COVID-19. On May 19, 2020, the City Commission discussed the ordinance and declined to pursue it at that time. See: <https://cityofmnhk.com/DocumentCenter/View/58769/Item-5C-Face-Mask-Discussion>

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. A violation of the Governor’s Order is a civil action brought by the County Attorney or the Attorney General under state law. There is no ticket to give to a violator. The Attorney General announced that he would not enforce the Governor’s Order, leaving the decision to the County Attorneys whether to pursue civil action.

The Manhattan city limits are located in Riley and Pottawatomie counties. The Governor’s order automatically applies in each county, **unless** the County makes certain findings and either overrides or modifies the order. On July 2, the Riley County Board of County Commissioners 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 is 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.

DISCUSSION

The attached Governor's Executive Order No. 20-52 defines face coverings and establishes rules about when they are required and when they are not required.

Modeled after the Governor's Order, the proposed City ordinance creates 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 an action that is "equally or more restrictive" than the Governor's Order. As of the date of this memo, Wichita adopted an ordinance modeled after 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.

New Section 22-72 sets a \$5 fine for the first offense, a \$10 fine for the second offense, and a \$20 fine for a third or subsequent offense. The City Commission may adjust the fine amounts to meet its needs. The penalty provision does not include the possibility of jail time. In addition to the fine, Charter Ordinance No. 59 requires state and local court costs and fees of \$98 to be assessed for this offense. The fine and \$74.50 of the court costs can be worked off through community service, at the State of Kansas rate of \$6/hour.

In most cases, the City Commission adopts ordinances that are in effect until the City Commission takes actions to repeal them. New Section 22-73 sunsets the ordinance at 11:59 p.m. on September 7, 2020, lasting through the end of Labor Day weekend. This is a placeholder; the City Commission can either set an alternative sunset date in Section 22-73, or decline to adopt proposed Section 22-73 so that Commission action would be required to repeal the ordinance.

This ordinance does not address any education or promotional efforts the City may want to pursue to encourage compliance. The City Commission can direct City staff to pursue those efforts without codifying a new provision in the City Code, and it is not typical or necessary to include such requirements in a municipal codebook.

FINANCING

Not applicable.

ALTERNATIVES

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

1. Adopt the ordinance.
2. Decline to adopt the ordinance.
3. Modify the ordinance to meet the City Commission's needs.
4. Table the item.

RECOMMENDATION

That the City Commission consider the proposed ordinance.

POSSIBLE MOTION

Approve Ordinance No. 7488 creating new Sections 22-70 through 22-73 of the City Code requiring individuals to wear masks or other face coverings in certain circumstances.

KJJ/

Enclosures:

1. Governor's Executive Order No. 20-52
2. Ordinance No. 7488

STATE OF KANSAS

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GOVERNOR.KANSAS.GOV

GOVERNOR LAURA KELLY

EXECUTIVE ORDER NO. 20-52

Requiring masks or other face coverings in public

WHEREAS, securing the health, safety, and economic well-being of residents of the State of Kansas is this Administration's top priority;

WHEREAS, Kansas is facing a crisis-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 to Kansas citizens;

WHEREAS, the United States Departments 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;

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

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

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 501 (b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121-5207 (the "Stafford Act");

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;

WHEREAS, as of this date, in Kansas there have been 14,990 reported positive cases of COVID-19 spread among 97 counties, including 272 deaths;

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;

WHEREAS, this worrying trend of increased COVID-19 spread is a danger to the health and safety of every Kansan and also presents a serious threat to reopening and reviving the Kansas economy;

WHEREAS, wearing a mask in public is the easiest and most effective way to protect each other and help keep our businesses open and our economy running;

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 businesses, schools, organized youth sports, and other important activities;

WHEREAS, the State of Kansas 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;

WHEREAS, for the aforementioned and other reasons, and in recognition and furtherance of my responsibility to provide for and ensure the health, safety, security, and welfare of the people of the State of Kansas, requiring that masks or other face coverings be worn in public spaces is necessary to promote and secure the safety and protection of the civilian population; and

WHEREAS, in these challenging times, this Administration will do whatever it can to avoid immediate dangers to the health, safety, and welfare of Kansans.

NOW, THEREFORE, pursuant to the authority vested in me as Governor of the State of Kansas, including the authority granted me by K.S.A 48-924 and K.S.A 48-925(b) and (c)(11), in order to ensure that Kansans can to help keep each other safe and keep our businesses open as we restore our economy, I hereby direct and order the following:

1. Effective at 12:01 a.m. on Friday, July 3, 2020, any person in Kansas shall cover their mouth and nose with a mask or other face covering when they are in the following situations:
 - a. Inside, or in line to enter, any indoor public space;
 - b. 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;¹
 - c. Waiting for or riding on public transportation or while in a taxi, private car service, or ride-sharing vehicle;
 - d. 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.

¹ Unless directed otherwise by an employee or healthcare provider.

2. Also effective at 12:01 a.m. on Friday, July 3, 2020, all businesses or organizations in Kansas must require all employees, customers, visitors, members, or members of the public to wear a mask or other face covering when:
 - a. Employees are working in any space visited by customers or members of the public, regardless of whether anyone from the public is present at the time;
 - b. Employees are working in any space where food is prepared or packaged for sale or distribution to others;
 - c. Employees are working in or walking through common areas, such as hallways, stairways, elevators, and parking facilities;
 - d. Customers, members, visitors, or members of the public are in a facility managed by the business or organization; or
 - e. Employees are 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.
3. The following are exempt from wearing masks or other face coverings in the situations described in paragraphs 1 and 2:
 - a. 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;
 - b. 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;
 - c. 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;
 - d. 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;
 - e. 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;
 - f. 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;

- g. 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;
- h. 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;
- i. Persons engaged in an activity or event held or managed by the Kansas Legislature;
- j. Persons engaged in a court-related proceeding held or managed by the Kansas Judiciary; and
- k. Persons engaged in any lawful activity during which wearing a mask or other face covering is prohibited by law.

4. Definitions:

- 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.

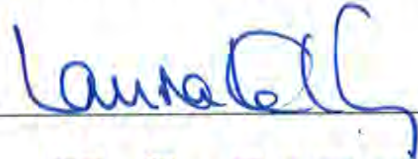
- 5. Nothing in this order shall restrict, limit, or supersede the Secretary of Health and Environment's authority to make isolation, quarantine, or other orders restricting movement as necessary to respond to escalating or worsening conditions in any local jurisdiction.
- 6. Local governments retain authority to issue and enforce equally or more restrictive orders or provisions and retain any authority to issue or enforce isolation or quarantine orders or other orders as necessary to respond to escalating or worsening conditions in any local jurisdiction. Counties may also exercise authority granted by K.S.A. 48-925 as amended by 2020 Special Session House Bill 2016, Sec. 33.
- 7. As currently permitted pursuant to state law, the Attorney General, county attorneys, and district attorneys enforcing this order should use their discretion and consider the totality of the circumstances as they determine appropriate enforcement actions.

8. In order to more accurately track and assess statewide status of COVID-19 cases, private labs conducting testing for COVID-19 shall report both positive and negative tests to the Kansas Department of Health and Environment.
9. The Four Tribes of Kansas (Iowa Tribe, Kickapoo Nation, Prairie Band Potawatomie Nation, and Sac & Fox Nation) retain any authority to regulate through their respective tribal councils for the health and welfare of their population.
10. This order should be read in conjunction with other executive orders responding to the COVID-19 pandemic that are still in effect and supersedes any contrary provisions of previous orders.

This document shall be filed with the Secretary of State as Executive Order No. 20-52. It shall become effective as of 12:01 a.m. on July 3, 2020, and remain in force until rescinded or until the statewide State of Disaster Emergency extended by House Bill 2016 enacted during the June 2020 special session relating to COVID-19 expires, whichever is earlier. This order may be extended or modified as circumstances dictate.

THE GOVERNOR'S OFFICE

BY THE GOVERNOR



DATED

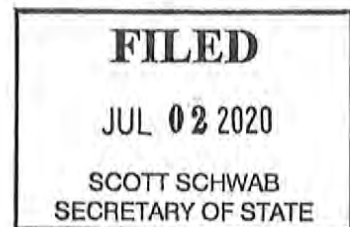
7.2.2020



Secretary of State



Assistant Secretary of State



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 501 (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 hearing impaired, or communicating with a person who is hearing impaired, 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 Sections 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