

# AGENDA ITEM SUMMARY

**MEETING DATE:** February 17, 2021

**ITEM NUMBER:** 12

**SUBJECT:** Consider Ordinance Amending City Code Sec. 16-266 Pertaining to Face Masks.

**RECOMMENDATION:** Approve Ordinance.

**BACKGROUND SUMMARY:**

City Code Sec. 16-266 requiring individuals to wear face masks or other face coverings in certain circumstances is scheduled to expire February 23, 2021 at 11:59 p.m. This ordinance proposal extends the expiration date to March 23, 2021 at 11:59 p.m. All other mask or face covering requirements pursuant to Sec. 16-266 would remain the same.

**ACTION RECORD**

Action: \_\_\_\_\_

Motion: \_\_\_\_\_ Second: \_\_\_\_\_

Abstained: \_\_\_\_\_ Vote: \_\_\_\_\_

GEITZ \_\_\_\_\_ GIEFER \_\_\_\_\_ GILLIGAN \_\_\_\_\_ SMITH \_\_\_\_\_ BRINKMAN \_\_\_\_\_

**ORDINANCE NO. 21-\_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF EMPORIA, KANSAS REQUIRING INDIVIDUALS TO WEAR MASKS OR OTHER FACE COVERINGS IN CERTAIN CIRCUMSTANCES AND AMENDING CITY CODE SECTION 16-266**

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

**WHEREAS**, the spread of COVID-19 in the City of Emporia has resulted in illness, quarantines, school closures, and temporary closure of business resulting in lost wages and financial hardship; and

**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 27,030,549 cases of illness and more than 466,465 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-10 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**, as of this date, in Kansas there have been 284,894 reported positive cases of COVID-19 spread including 4,303 deaths; and

**WHEREAS**, recent weeks and months have seen the numbers of COVID-19 cases, hospitalizations, and deaths spike in Kansas and across the nation; and

**WHEREAS**, this trend of increased COVID-19 spread is a danger to the health and safety of residents and visitors to the City of Emporia, 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 and keep our businesses open and our economy running; and

**WHEREAS**, the City of Emporia 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**, the City of Emporia approved Ordinance 20-24 on August 5<sup>th</sup>, 2020 requiring individuals to wear masks or other face coverings in certain circumstances, and

**WHEREAS**, for the aforementioned and other reasons, the governing body of the City of Emporia 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 Emporia by amending Section 16-266 of the Code of Ordinances of the City of Emporia, Kansas and extending the requirement that masks or other face coverings be worn as described in the ordinance until March 23, 2021.

**BE IT ORDAINED by the Governing Body of the City of Emporia, Kansas;**

**Section 1.** That Section 16-266 of the Code of Ordinances of the City of Emporia, Kansas, is hereby amended to read as follows:

**“Sec. 16-266 Mask or other Face Coverings in Certain Circumstances.**

(a) Mask or other face coverings; definitions. The following words or phrases when used in this article shall have the following meanings:

- (1) "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.
- (2) “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.”

(b) Mask or other face coverings; when required; exemptions.

- (1) All persons in the city shall cover their mouths and noses with masks or other face coverings when they are in the following situations:
  - (A) While 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, unless directed otherwise by an employee thereof or a health care provider;

- (C) Waiting for or riding on public transportation or while in a taxi, private car service, or ride-sharing vehicle; or,
  - (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.
- (2) All businesses, organizations and non-profit associations in the City of Emporia must require all employees, customers, visitors, members, or members of the public to wear a mask or other face covering as follows:
- (A) 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;
  - (B) Employees, when working in any space where food is prepared or packaged for sale or distribution to others;
  - (C) Employees, when working in or walking through common areas, such as hallways, stairways, elevators, and parking facilities;
  - (D) Customers, members, visitors, or members of the public, when in a facility managed by the business or organization;
  - (E) 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.
- (3) The following individuals are exempt from wearing masks or other face coverings in the situations described in subsections (b)(1) and (b)(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 hearing impaired, or communicating with a person who is hearing impaired, 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) 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).”

(c) Mask or other face coverings; penalties; enforcement.

- (1) Any person, business or organization violating the provisions of this Section of the Code of the City of Emporia shall be guilty of an infraction. The person or persons responsible for any business or organization that does not comply with subsection(b)(2) 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.
- (2) A violation of this section shall be punished by a fine of twenty five (\$25.00) dollars upon a first conviction, by a fine of fifty (\$50.00) dollars upon a second conviction, and by fine of one hundred dollars (\$100.00) dollars upon a third or subsequent conviction, plus court costs.

(d) Mask or other face coverings; effective term. The provisions of Section 16-266 through Section 16-268 of the city code shall be in effect until 11:59 p.m. on March 23, 2021.”

**Section 2.** That the provisions of this ordinance as amended shall be included and incorporated in the code of the City of Emporia, Kansas.

**Section 3.** Effective Date. This ordinance shall take effect upon publication in the official city newspaper.

PASSED AND APPROVED by the Governing Body of the City of Emporia, Kansas, this 17<sup>th</sup> of February 2021.

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Robert F. Gilligan, Mayor

ATTEST:

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Kerry Sull, City Clerk