



City of Grand Island

Tuesday, November 24, 2020

Council Session

Item F-5

#9807 – Consideration of Approving City Code Addition of Chapter 41, Health - Prevention of COVID-19

Staff Contact: Jerry Janulewicz

Council Agenda Memo

From: Jerry Janulewicz, City Administrator
Meeting: November 24, 2020
Subject: Adoption of Ordinance Regarding Prevention of COVID-19
Presenter(s): Jerry Janulewicz, City Administrator

Background

Teresa Anderson, Director of the Central District Health Department, is recommending that the City of Grand Island adopt an ordinance to require facial coverings as a means to prevent or retard the spread of COVID-19. Ms. Anderson's letter to council is attached to this memo for background information.

The ordinance prepared for council consideration closely resembles the ordinance enacted by the City of Kearney on November 16, 2020 and the ordinance scheduled for consideration on November 23, 2020 by the City Council for the City of Hastings. In both cases, enactment was recommended or will be recommended by each city's Board of Health. The City of Grand Island has not established a Board of Health as authorized by Nebraska Statute §16-238. Therefore, a special meeting of the City Council will be scheduled for Monday, November 23, 2020 to consider enactment of an ordinance establishing the City Board of Health.

It is anticipated that the Board of Health, if established, will meet prior to Council's November 24, 2020 meeting to consider the provisions of this ordinance and make recommendations to the City Council concerning the same. By state statute, the membership of the Board of Health consists of the following: "The mayor, who shall be chairperson, a physician, who shall be medical adviser, the chief of police, who shall be secretary and quarantine officer, the president of the city council, and one other member."

Discussion

The attached letter from Teresa Anderson contains considerable discussion concerning the need for action due the increasing numbers of COVID-19 infections in the community and the resulting demands upon hospital capacity. Additionally, the following is submitted for council's consideration:

- 1) 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 Grand Island; 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
- 2) information from the World Health Organization, the United States Centers for Disease Control and Prevention (CDC), Nebraska Department of Health and Human Services, the Central District Health Department, local public health departments throughout Nebraska, and members of the City of Grand Island and Hall County medical community indicates that citizens of the City of Grand Island have been and will continue to be exposed due to community transmissions of COVID-19; and
- 3) the manner in which the spread of COVID-19 cases in the City of Grand Island has occurred creates an unacceptable risk to the health, safety, and welfare of the citizens of the City of Grand Island; and
- 4) the number of COVID-19 infections within the City of Grand Island continues to increase; and
- 5) COVID-19 constitutes a public nuisance and a threat to the health, safety, and welfare of the City of Grand Island; and
- 6) the CDC, doctors and infectious disease experts from the University of Nebraska Medical Center and Nebraska Medicine 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
- 7) the wearing of face coverings by every individual while indoors in public places in the City of Grand Island 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
- 8) the wearing of face coverings by every individual while indoors in public places in the City of Grand Island will help keep businesses open and operating, encouraging economic growth, and preventing prolonged economic harm.

Alternatives

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

Recommendation

Administration recommends that Council approve Ordinance #9807.

Sample Motion

Move to approve Ordinance #9807.

November 17, 2020

Mayor Steele

As we have discussed, both the number of cases and the number of hospitalizations in the Central District are rapidly increasing. Our Central Nebraska hospitals are very close to capacity. Patients who under normal circumstances would be cared for in ICU's are being managed in medical surgical units because there are either no beds or no staff and ICU's or nowhere to transfer them. For the week ending October 17th, we averaged 324 new cases/100,000. This past week ending November 14, 2020, that average increased to 774 new cases/100,000, more than doubling the rate of new cases. Today, just over 50% of hospitalizations in the Central District are COVID-19 related. Hospitalizations have nearly doubled since November 1st when there were 28 inpatients, and today there are 51 inpatients. Long term care facilities are experiencing COVID-19 outbreaks. Some of our schools have been forced to temporarily close based on staff and administration illness, and as many as 20% of students in the district are absent at any one time because they have either tested positive for COVID-19 or are close contacts of positive cases. The risk dial for the Central District is in the red zone with no foreseeable reduction. This COVID risk dial is based on a number of factors which include hospital ICU and ventilator use, trends in case counts and our ability to investigate cases and perform contact tracings of an unimaginable volume of. cases. Our repeated requests to the Governor's office for universal mask policy have been rejected, with our most recent request rejected on Sunday, November 8th. We are now at critical juncture. It is clear that if we do not act locally and swiftly now, we will continue with rampant uncontrolled spread of COVID-19.

According to the Centers for Disease Control (CDC), "SARS-CoV-2 (COVID-19) infection is transmitted predominately by respiratory droplets generated when people cough, sneeze, sing, talk, or breathe. CDC recommends community use of masks, (specifically non-valved multi-layer cloth masks), to prevent transmission of SARS-CoV-2." Masks work in Two WAYS. First they reduce the emission of virus-laden droplets ("source control"), which is especially relevant for asymptomatic or presymptomatic infected wearers who


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feel well and may be unaware of their infectiousness to others, and who are estimated to account for more than 50% of transmissions. Masks also help reduce inhalation of these droplets by the wearer (“filtration for personal protection”). The community benefit of masking for SARS-CoV-2 control is due to the combination of these effects. Individual protection benefit increases with increasing numbers of people using masks consistently and correctly.

A report issued by the CDC on November 10th states that cloth masks not only effectively block most large droplets (i.e., 20-30 microns and larger) but they can also block the exhalation of fine droplets and particles (also often referred to as aerosols) smaller than 10 microns ;which increase in number with the volume of speech and specific types of phonation. Multi-layer cloth masks can both block up to 50-70% of these fine droplets and particles and limit the forward spread of those that are not captured. Upwards of 80% blockage has been achieved in human experiments that have measured blocking of all respiratory droplets, with cloth masks in some studies performing on par with surgical masks as barriers for source control. The relationship between source control and personal protection is likely complementary and possibly synergistic, so that individual benefit increases with increasing community mask use. Adopting universal masking policies can help avert future lockdowns, especially if combined with other non-pharmaceutical interventions such as social distancing, hand hygiene, and adequate ventilation.

The science on the value of universal masking in prevention of the spread of COVID-19 is unquestionable. The need for universal masking is urgent. This call to action requires swift response. CDHD recommends immediate passage of a universal masking policy for the city of Grand Island that coincides with the passage of similar policies in Hastings and Kearney.

Sincerely,



Teresa Anderson, MSN, PHCNS -BC
Health Director

ORDINANCE #-9807

An emergency ordinance pursuant to the authority of the City of Grand Island to pass ordinances and make regulations to serve the general health of the city, prescribe rules for the prevention, abatement, and removal of nuisances as well as the authority to make such regulations as to prevent the introduction and spread of contagious, infectious or malignant diseases in the city of Grand Island pursuant to Neb. Rev. Stat. §§16-238, 16-240 and 16-246; to add Chapter 2, Article VIII, Sections 2-64 through 2-75 to the official city code entitled "Prevention of COVID-19"; to clarify and/or make general corrections to various code sections, to repeal any ordinances and resolutions or parts thereof in conflict herewith; and to provide for publication and the effective date of the ordinance.

BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA:

SECTION 1. According to the Director of the Central District Health Department, both the number of cases and the number of hospitalizations in the Central District are rapidly increasing. Hospitals in Central Nebraska are very close to capacity. Patients who under normal circumstances would be cared for in Intensive Care Units (ICU's) are being managed in medical surgical units because there are either no beds or no staff in ICU's or anywhere to transfer them. For the week ending October 17, 2020, the Central District Health Department area averaged 324 new cases/ 100,000 persons. The week ending November 14, 2020, saw that average increase to 774 new cases/ 100,000 persons, more than doubling the rate of new cases. As of November 17, 2020, just over 50% of hospitalizations in the Central District are COVID-19 related. Hospitalizations have nearly doubled since November 1, 2020 when there were 28 inpatients, and as of November 17, 2020, there are 51 inpatients. Long term care facilities are experiencing COVID-19 outbreaks and some schools have been forced to temporarily close based on staff and administration illness. Based upon the above conditions, the Director of the Central District Health Department has recommended the enactment of an ordinance requiring the wearing of masks as an effective means of curtailing the spread of the Novel Coronavirus.

Approved as to Form
November 19, 2020 City Attorney

SECTION 2. Chapter 2, Article VIII, Sections 2-64 thru 2-75 be enacted to read as follows:

ARTICLE VIII. – PREVENTION OF COVID-19

§2-64. 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 Grand Island, 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 Grand Island; 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 United States Centers for Disease Control and Prevention (CDC), Nebraska Department of Health and Human Services, the Central District Health Department, local public health departments throughout Nebraska, and members of the City of Grand Island and Hall County medical community indicates that citizens of the City of Grand Island 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 Grand Island has occurred creates an unacceptable risk to the health, safety, and welfare of the citizens of the City of Grand Island; and
 - e) the number of COVID-19 infections within the City of Grand Island continues to increase; and
 - f) COVID-19 constitutes a public nuisance and a threat to the health, safety, and welfare of the City of Grand Island; and
 - g) the CDC, doctors and infectious disease experts from the University of Nebraska Medical Center and Nebraska Medicine 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 Grand Island 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 Grand Island will help keep businesses open and operating, encouraging economic growth, and preventing prolonged economic harm; and
- j) this ordinance is designated as an urgent measure necessary to preservation of public health; and
- k) it is just and proper for the City Council to exercise the authority granted to it by Nebraska statutes in furtherance of protecting the public health, safety, and welfare.

§ 2-65. 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, cloth face mask, scarf, bandana, 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 Open to the General Public. – Premises open to the general public is 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.

§ 2-66. Individual Facial Coverings Required.

All individuals age five and older shall wear a face covering over their mouth and nose while indoors in a premises open to the general public unless the individual maintains a minimum of six 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, or county services; or
- (2) is seated at a bar, restaurant, or other location to eat or drink, or while immediately consuming food or beverages; or

- (3) is engaged in an occupation preventing the wearing of a face covering; or
- (4) is obtaining a service or purchasing goods or services that requires the temporary removal of the face covering; or
- (5) is asked to remove a face covering to verify an identity for lawful purposes; or
- (6) is providing a speech, lecture, or broadcast to an audience so long as six 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 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.

§ 2-67. Premises Open to the General Public – Duty to Require Facial Coverings.

Any individual or entity which maintains a premises open to the general public shall require all individuals age five 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 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 or county services; or
- (2) is seated at a bar or restaurant to eat or drink, or while immediately consuming food or beverages; or
- (3) is engaged in an occupation preventing the wearing of a face covering; or
- (4) is obtaining a service or purchasing goods or services that requires the temporary removal of the face covering; or
- (5) is asked to remove a face covering to verify an identity for lawful purposes; or
- (6) is providing a speech, lecture, or broadcast to an audience so long as six 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.

§ 2-68. Notice of Face Covering Requirements.

Any individual or entity which maintains a premises that is open to the general public must post one or more signs that are visible to all persons — including workers, customers, students, and visitors instructing them to wear face coverings as required by this Article.

§ 2-69. Exceptions.

The provisions of this Article shall not apply to:

- (1) Courts of law; non-city department public utilities; federal, state, or county operations; medical providers, facilities, or pharmacies; congregate living centers or facilities; group homes and residential drug and/or mental health treatment facilities; shelters for homeless persons; airport travel; election offices; polling places on an election day; or to residential dwelling units.
- (2) Children under the age of five. While children ages three and four may wear a face covering if that child can remove the face covering without assistance, guidance from the CDC states that children two 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 workstation, provided that the desk or workstation 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 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 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 feet or more is maintained at all times.
- (12) 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.
- (13) Participants in a sporting event, but only while they are playing the game, if the school or sponsoring organization does not require facial coverings, however, spectators, coaches, and non-participants would be required to wear facial coverings.

§ 2-70. 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 2-67, above, is hereby declared to be a nuisance and a danger to the public health, safety, and welfare.

§ 2-71. Application.

The provisions of this Article shall only apply to all persons and property within the corporate limits of the City of Grand Island and shall not extend into the two-mile extraterritorial jurisdiction of the City.

§ 2-72. Penalty.

Any individual or person who is found to have violated any of the provisions of this Article shall be guilty of an offense as defined in Section 1-2 of City code for each offense and shall be subjected to a minimum fine of not less than \$25 for the initial offense. Each instance of violation of this Article may be considered to be a separate offense.

§ 2-73. 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.

§ 2-74. Sunset Provision.

The requirements imposed by this Article shall expire and terminate at 11:59 p.m. on February 23, 2021, unless otherwise extended or earlier terminated by ordinance of the City Council.

2-75. Conflicts.

In the event of a conflict between the provisions of this Chapter 2, Article VIII and a Directed Health Measure issued by the Nebraska Department of Health or by the Central District Health Department the provision providing the greatest protection for public health shall control.

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.

SECTION 4. This Ordinance, being emergency in nature, shall be in full force and take effect three (3) days from and after the date of its passage.

Enacted: November 24, 2020.

Roger G. Steele, Mayor

Attest:

RaNae Edwards, City Clerk ~~PASSED AND APPROVED~~ this 24th day of November, 2020.

~~Roger G. Steele, Mayor~~

ATTEST: _____

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~~RaNae Edwards, City Clerk~~