

EMERGENCY ORDINANCE NO. 8457

AN EMERGENCY ORDINANCE PURSUANT TO THE CITY OF KEARNEY'S AUTHORITY 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 KEARNEY PURSUANT TO NEB. REV. STAT. §§16-238, 16-240 AND 16-246; TO ADD ARTICLE 3, SECTIONS 5-311 THROUGH 5-322, ENTITLED "PREVENTION OF COVID-19," TO CHAPTER 5 OF THE KEARNEY MUNICIPAL CODE; TO PROVIDE LEGISLATIVE FINDINGS AND INTENT; TO REQUIRE INDIVIDUALS TO WEAR FACIAL COVERINGS AND EXCEPTIONS THEREOF; TO PROVIDE FOR THE ENFORCEMENT OF VIOLATIONS AND PENALTIES; TO ESTABLISH A SUNSET PROVISION; AND TO PROVIDE THE EFFECTIVE DATE HEREOF.

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

Section 1. That as a result of Novel Coronavirus (COVID-19) pandemic and with an increased number of confirmed COVID-19 cases within the City limits of the City of Kearney and the closing of numerous city and private facilities, an emergency exists authorizing action by the City of Kearney. This ordinance seeks to impose a non-pharmaceutical intervention to combat the spread of COVID-19 and to halt the progression thereof.

Section 2. That Chapter 5, Article III, Section 5-311 through Section 5-322 of the Kearney Municipal Code is hereby created as follows:

ARTICLE III. – PREVENTION OF COVID-19

Sec. 5-311. – 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 Kearney, Nebraska; and
 - b) and 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 Kearney; 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 Two Rivers Health Department, local public health departments throughout Nebraska, and members of the City of Kearney and Buffalo County medical community indicates that citizens of the City of Kearney 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 Kearney has occurred creates an unacceptable risk to the health, safety, and welfare of the citizens of the City of Kearney; and
- e) the number of COVID-19 infections within the City of Kearney continues to increase; and
- f) COVID-19 constitutes a public nuisance and a threat to the health, safety, and welfare of the City of Kearney; and
- g) The Director of the United States Centers for Disease Control and Prevention (CDC), the City Physician for the City of Kearney, 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 Kearney 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 Kearney 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 Nebraska statutes in furtherance of protecting the public health, safety, and welfare.

Sec. 5-312 – 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. 5-313. – 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 that is open to the general public including, but not limited to, educational institutions, 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 their seat at an arena 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.

Sec. 5-314. – 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 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.

Sec. 5-315. — 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.

Sec. 5-316. — 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. 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.

Sec. 5-317 – 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 5-314, above, is hereby declared to be a nuisance and a danger to the public health, safety, and welfare.

Sec. 5-318 – Application.

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

Sec. 5-319 – Penalty.

Any individual or person who is found to have violated any of the provisions of this Article shall be guilty of an infraction as defined in section 1-112 of City code for each offense and shall be subjected to a fine of \$25 for the initial offense. Each instance of violation of this Article may be considered to be a separate offense.

Sec. 5-320 — 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. 5-321 — Sunset Provision.

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

Sec. 5-322 — Report Required.

The City Physician of the City of Kearney shall, every month 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 include information on the number of new COVID-19 cases in Buffalo County, the City of Kearney hospital occupancy rate, and the ventilator utilization rate as well as any such information that the City Physician deems relevant to the spread of COVID-19 within the City of Kearney.

Section 3. That Chapter 5, Article III, Sections 5-323 through 5-333 are hereby reserved for future use.

Section 4. 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 5. This Ordinance, being emergency in nature, shall be in full force and take effect beginning at 12:01 a.m. on Monday, November 23, 2020.

INTRODUCED BY COUNCIL MEMBER

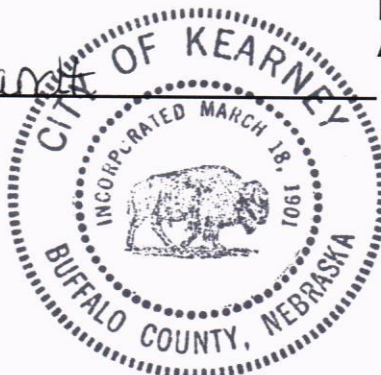
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PASSED AND APPROVED THIS 17TH DAY OF NOVEMBER, 2020.

ATTEST:

Lauren Brandt
LAUREN BRANDT
CITY CLERK

Stanley A. Clouse
STANLEY A. CLOUSE
PRESIDENT OF THE COUNCIL
AND EX-OFFICIO MAYOR



CERTIFICATE

STATE OF NEBRASKA)
COUNTY OF BUFFALO) ss
CITY OF KEARNEY)

I, Lauren Brandt, City Clerk of the City of Kearney, Buffalo County, Nebraska, hereby certify that the attached is a true and correct copy of Emergency Ordinance No. 8457 pursuant to the City of Kearney's authority 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 Kearney pursuant to Neb. Rev. Stat. §§16-238, 16-240 and 16-246; to add Article 3, Sections 5-311 through 5-322, entitled "Prevention of COVID-19," to Chapter 5 of the Kearney Municipal Code; to provide legislative findings and intent; to require individuals to wear facial coverings and exceptions thereof; to provide for the enforcement of violations and penalties; to establish a sunset provision which was passed and approved by the President and City Council on the 17th day of November, 2020 and ordered published in pamphlet form by the authority of the Council on November 18, 2020 with copies being made available to the public on such date at the Office of the City Clerk, the Police Department and the Public Library.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal this 18th day of November, 2020.

Lauren Brandt
LAUREN BRANDT CITY CLERK

