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TO: **Mayor Jordan**
City Council

CC: **Susan Norton**, Chief of Staff

FROM: **Kit Williams**, City Attorney

DATE: **May 24, 2021**

RE: **Current Ordinance 6323 (Face Mask Mandate)**

A question from Council Member Sonia Gutierrez reminded me that I need to furnish you a copy of Ordinance 6323, so you can see how my proposed amendments would fit into your first ordinance, especially as I did not suggest any changes to the four exceptions to the mask mandate requirements.

I have now attached that mask mandate ordinance to this memo.

This morning Mayor Jordan informed his staff that he fielded many questions and suggestions about the current face mask mandate over the weekend. Several citizens stated that the City followed the CDC's recommendations when the City Council passed Ordinance 6323 to begin the face mask mandate and so should follow their new recommendations and repeal it now.

My suggestion is not to repeal the mask mandate, but to amend it pursuant to the CDC recommendations that fully vaccinated persons no longer need to wear face masks in most locations, but unvaccinated persons still need to wear face masks to protect themselves and other unvaccinated persons. This would also comply with the Fayetteville Board of Health's recommendations that I have already provided to you as an exhibit of my proposed ordinance to amend Ordinance 6323.



113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323

Ordinance: 6323

File Number: 2020-0503

AN ORDINANCE TO REQUIRE PERSONS TO WEAR FACE MASKS THAT COVER THE NOSTRILS AND MOUTH TO HELP RESTRICT THE SPREAD OF THE COVID-19 VIRUS, TO ESTABLISH REASONABLE EXEMPTIONS, TO OPERATE A NON-EMERGENCY BUSINESS SUPPORT HOTLINE, TO SET PRACTICAL ENFORCEMENT CONDITIONS, AND TO APPROVE A BUDGET ADJUSTMENT

WHEREAS, the spread of the Covid-19 virus has been accelerating in Washington County; and

WHEREAS, the administrator of the Washington Regional Medical System has said it is critically important to take the recent surge in COVID-19 cases seriously, and also has asked the community to "wear a mask when out in public;" and

WHEREAS, the Coroner of Washington County, Roger Morris, has reminded people to wear a mask to protect others; and

WHEREAS, Jennifer Dillaha of the Arkansas Department of Health, has said that wearing a mask is the most effective action that can be taken to slow the spread of the Covid-19 virus; and

WHEREAS, numerous other epidemiologists have insisted that widespread use of a face mask is necessary to prevent the more rapid spread of the Covid-19 virus, especially when humans gather in groups, and thereby necessary for the safety and health of Fayetteville citizens, residents and visitors; and

WHEREAS, employees and most members of the public in public service areas of places of public accommodation should be required to wear masks to cover their nostrils and mouth for the health and safety of all, subject to certain exceptions; and

WHEREAS, businesses cannot reasonably implement health directives as intended without municipal support services; and

WHEREAS, the legal standard of willful neglect can be used to shield any business making a good faith attempt to implement this ordinance from any penalty whatsoever; and

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby determines that the health and safety of Fayetteville residents require that persons within public service areas in all places of public accommodation are required to constantly wear face masks covering the nostrils and mouth of such persons subject to the following exceptions:

- A. Masks may be removed while consuming food or drinking a beverage and exercising if social distancing and disinfection best practices are also followed.
- B. Settings with ten (10) or fewer persons present, such as small business offices which do not serve the public in person, and areas without normal public access, such as semi-private offices and workshops, do not require masks, unless persons cannot follow social distancing best practices
- C. Reasonable accommodations may be made for individuals with a disabling condition that prevents wearing a face mask.
- D. Masks may be removed in outdoor settings generally while best practices to maintain social distance are followed. Masks shall be worn at managed events when attendance and format prevent social distancing.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby determines that the health and safety of Fayetteville residents require that all businesses, offices, shops, and manufacturing and similar facilities are required to post conspicuous signs at all entrances to their establishment that employees, customers and visitors to their establishment must wear face masks pursuant to the rules stated in Section 1 of this ordinance to be admitted into their premises.

Section 3: That the City Council of the City of Fayetteville, Arkansas hereby determines that places of public accommodation are required to provide disposable face masks for free or a nominal cost for members of the public seeking to enter their establishments and are required to deny entry to members of the public who refuse to wear face masks as required in Section 1.

Section 4: That the City Council of the City of Fayetteville, Arkansas hereby approves a budget adjustment of \$100,000.00 to operate a public safety campaign to raise community rates of

mask-wearing,. The campaign shall include the distribution of free face masks to Fayetteville businesses, the operation of a business support hotline, and an outreach strategy focused on high-interaction sites. The non-emergency business support hotline shall be available for businesses to request technical and/or field support for any reason related to our adaptation to the Covid-19 virus, including requesting free masks for distribution to their customers, the creative use of outdoor space, and generally when implementing health directives and emerging best practices.

Section 5: Sunset. After the governor's emergency declaration ends, an ordinance to repeal this ordinance shall be placed on the agenda immediately following the end of the state-declared emergency. The City Council at that time shall act on that ordinance with all haste, either repealing this ordinance in whole, in part, or extending the requirement and associated programs.

Section 6: Penalties on individuals. Individuals which refuse to wear a mask when required will be denied entry to places of accommodation. Places of accommodation may call either the non-emergency hotline for assistance, or they may call 911 if the situation is an emergency. There is no other penalty for refusing to wear a face mask, but disorderly conduct and threatening or assaulting another person are crimes that can still be enforced.

Section 7: Penalties on businesses. No business shall suffer a penalty unless that business fails to implement the requirements of this ordinance due to willful neglect. In that case, failure to enforce the provisions of this ordinance shall constitute a violation subject to the penalties allowed in §10.99

General Penalty of the *Fayetteville Code*.

Section 8: Severability clause. If any provisions, sections or portion of this ordinance is found or determined by a court for any reason to be invalid or unenforceable, those provisions shall be severed from the remaining portions of this ordinance which shall remain effective in the absence of any invalid or unenforceable provisions.


Section 9: That the City Council of the City of Fayetteville, Arkansas hereby determines that this ordinance should become effective without delay because widespread use of a face mask is necessary to prevent the more rapid spread of the Covid-19 virus, especially when humans gather in groups, which is necessary for the public peace as well as the health and safety of Fayetteville residents. Therefore, the City Council hereby declares an emergency exists such that this ordinance shall become effective immediately upon its passage and approval.

PASSED and APPROVED on 6/16/2020


Ordinance: 6323

File Number: 2020-0503

Approved:


Lioneld Jordan, Mayor

Attest:


Kara Paxton, City Clerk Treasurer

