



MEMO

Legal Department

Item No. 17

To: Mayor Haila and Ames City Council members

From: Mark O. Lambert, City Attorney

Date: August 21, 2020

Subject: Draft face coverings ordinance

Attached is the draft face-coverings ordinance which you directed me to prepare during the last City Council meeting, August 18, 2020.

As a reminder, this is not first reading of the proposed ordinance, rather this is the Council's opportunity to review the draft and make changes so that the ordinance can be brought back for first reading.

A few items of note:

1. I put a Preamble into this ordinance. The City has not traditionally put preambles or statements of intent in ordinances, but in this situation I felt it was necessary to set forth the public-health reasons for the ordinance as well as our legal justification for the ordinance.
2. I began, as the Council indicated, with the Story County Board of Health's recommendations, and I also consulted the other ordinances or mayoral proclamations on this subject from around the state, primarily the City of Dubuque ordinance. This is a hybrid put together with the goal of providing the Council with what the Council requested.
3. Although the Story County Board of Health recommendation was for an exception for children under the age of 2, we drafted the ordinance to say children under the age of 3, which seemed more workable in the real world. Therefore, children age 1 or 2 would be exempt from the face-covering mandate; children aged 3 or older would be required to wear a face covering.
4. The ordinance would apply to "any indoor or outdoor setting or establishment where the public is invited in." This would exclude, for

example, private office buildings, but would apply to retail stores (among others).

5. There is an exclusion when a person is in the person's own home, or yard, or in another person's home.
6. There is an exclusion for employment settings where six feet of separation can be achieved. For example, a grocery store manager would not be required to wear a face covering in her or his office in the back of the store, but the employees (or the manager) out in the grocery store interacting with the public and other employees would be required to wear a face covering.
7. Violations are a municipal infraction, punishable by a \$50 fine per occurrence. The ordinance specifies that a citation is a last resort.
8. I added a Sunset Clause, so that the ordinance self-expires after May 31, 2021. The sunset date can be extended or the ordinance repealed before that date. This is to indicate to the public that this is not a permanent ordinance.

Of course, any of these provisions, or any other provision, may be changed or deleted by the Council.

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ORDINANCE NO.

AN ORDINANCE TO AMEND THE MUNICIPAL CODE OF THE CITY OF AMES, IOWA, BY ENACTING A NEW SECTION 17.37 THEREOF, FOR THE PURPOSE OF FACE COVERING REQUIREMENT REPEALING ANY AND ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT TO THE EXTENT OF SUCH CONFLICT; PROVIDING A PENALTY; AND ESTABLISHING AN EFFECTIVE DATE.

BE IT ENACTED, by the City Council for the City of Ames, Iowa, that:

Section One. The Municipal Code of the City of Ames, Iowa shall be and the same is hereby amended by enacting a new Section 17.37 as follows:

“Sec. 17. 37 FACE COVERING REQUIREMENT:

PREAMBLE: This ordinance is being adopted in response to a worldwide pandemic of the novel coronavirus which causes COVID-19. The virus has been spreading locally in Story County, the City of Ames, and on the Iowa State University campus. The U.S. Centers for Disease Control, Iowa Department of Public Health, Story County Board of Health, and Mary Greeley Medical Center have all encouraged people to wear face coverings as a method to slow or prevent transmission of the virus. This ordinance is being adopted pursuant to the Municipal Home Rule Authority as stated in Article III, Section 38A of the Iowa Constitution and Iowa Code section 364.1. It is the intent and belief of the Ames City Council that this ordinance does not conflict with provisions of the Governor of Iowa’s Public Health Disaster Emergency Proclamation regarding COVID-19 which is currently in effect.

(1) Every person in the City of Ames three (3) years of age or older must wear a face covering that completely covers the person’s nose and mouth under the following circumstances:

- a. Outside whenever the person cannot stay at least six (6) feet away from others;
- b. Inside any indoor setting or establishment where the public is invited in, including, but not limited to:
 - i. Grocery, retail, and hardware stores, gas stations and convenience stores, fitness centers, pharmacies, any other indoor public setting when with persons who do not live in the person’s household, and other public settings that are not the person’s place of residence.

(2) A person is not required to wear a face covering at the following places or times:

- a. While traveling in a personal vehicle alone or with household members.
- b. While a person is in the person’s household or the household’s yard, or in another person’s household.
- c. While outside, where at least six (6) feet of physical separation from others can be maintained.

d. While at a person's place of employment where at least six (6) feet of physical separation from others can be maintained.

e. While exercising at moderate or high intensity, such as jogging or biking or while engaging in or practicing for sporting activities.

f. While seated inside or outside at a food establishment in the process of eating or drinking.

g. While seated inside or outside at a bar in the process of eating or drinking.

h. While obtaining a service that would require temporary removal of the person's face covering.

i. When federal or state law prohibits wearing a face covering or requires the removal of the face covering.

(3) The following persons are exempt from wearing a face covering:

a. Persons younger than three (3) years of age.

b. Anyone who has a medical condition causing difficulty of breathing or is on oxygen therapy or a ventilator.

c. Anyone who is unconscious, incapacitated, or otherwise unable to remove the face covering without assistance.

d. Anyone who has been advised by a medical or behavioral health professional not to wear face coverings.

e. Anyone actively engaged in a public safety role, including but not limited to law enforcement, firefighters, or emergency medical personnel, although a face covering should be worn if possible.

(4) Violations of this section shall be a municipal infraction punishable by a penalty of \$50 for a person's first violation thereof and \$50 for each repeat violation. Attempts to obtain compliance with this ordinance shall first be through education and encouragement, with citation as a last resort.

SUNSET CLAUSE: This ordinance expires and becomes null and void after May 31, 2021, unless the date in this clause is amended or the ordinance is sooner repealed."

Section Two. Violation of the provisions of this ordinance shall constitute a municipal infraction punishable as set out by law.

Section Three. All ordinances, or parts of ordinances, in conflict herewith are hereby repealed to the extent of such conflict, if any.

Section Four. This ordinance shall be in full force and effect from and after its passage and publication as required by law.

Passed this _____ day of _____, _____.

Diane R. Voss, City Clerk

John A. Haila, Mayor

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