

(Summary Published in the Leavenworth Times on November 21, 2020)

ORDINANCE NO. 8154

AN ORDINANCE CREATING NEW ARTICLE V (FACE MASK REQUIREMENT) OF CHAPTER 22 (HEALTH AND SANITATION) AND SECTIONS 22-204, 22-205, 22-206, AND 22-207, REQUIRING INDIVIDUALS TO WEAR MASKS OR OTHER FACE COVERINGS IN CERTAIN CIRCUMSTANCES; REQUIRING BUSINESSES AND ORGANIZATIONS TO REQUIRE ALL EMPLOYEES, CUSTOMERS, VISITORS, MEMBERS, OR MEMBERS OF THE PUBLIC TO WEAR A MASK OR OTHER FACE COVERING IN CERTAIN CIRCUMSTANCES; AND ESTABLISHING PENALTIES THEREFORE.

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

WHEREAS, the City of Leavenworth is facing a crisis with the pandemic and public health emergency of COVID- 19, resulting in illness, quarantines, school closures, and temporary closure of businesses resulting in lost wages and financial hardship; and,

WHEREAS, the United States Department of Health and Human Services declared a public health emergency for COVID-19 beginning January 27, 2020, with now more than 11,300,000 cases of the illness and more than 247,800 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, after a steady trend of decreasing metrics, recent weeks have seen the numbers of COVID-19 cases, hospitalizations, and deaths spike in Kansas and across the nation; and,

WHEREAS, this worrying trend of increased COVID-19 spread is a danger to the health and safety of residents and visitors to the City of Leavenworth, and also presents a serious threat to reopening and reviving the City's economy; and,

WHEREAS, wearing a mask in public is one of the easiest and most effective ways to protect each other to prevent COVID-19 spread and to help support the mission-readiness of Fort Leavenworth, and to keep the City's K-12 schools and businesses open, and the economy running; and,

WHEREAS, wearing a mask in public is not only safe and easy, it is necessary to avoid more restrictive local measures that could involve closing K-12 schools, businesses, organized youth sports, and other important activities; and,

WHEREAS, the Governor of the State of Kansas has previously issued Executive Order No. 20-52 requiring individuals to wear masks or other face coverings in public, but the terms of such Executive Order are not, at this time, effective as to or enforceable within Leavenworth County, Kansas, pursuant to action taken by the Leavenworth County Commission under K.S.A. 48-925, as amended by Section 33 of 2020 Kansas Special Session House Bill No. 2016.

WHEREAS, the City of Leavenworth 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, for the aforementioned and other reasons, the governing body of the City of Leavenworth 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 Leavenworth, by requiring that masks or other face coverings be worn as described in this ordinance; and

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAVENWORTH, KANSAS:

Section 1. That a new Article V to Chapter 22 of the Leavenworth Code of Ordinances, with new Sections 22-204, 22-205, 22-206, and 22-207, is hereby established to read as follows:

Chapter 22

HEALTH AND SANITATION

Article V. Face Mask Requirement

Sec. 22-204. Mask or other face coverings; definitions. The following words or phrases when used in this article shall have the following meanings:

- (a) "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, and may include a plastic face shield. 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.
- (b) "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.

Sec. 22-205. Mask or other face coverings; when required; exemptions.

- (a) All persons in the city shall cover their mouths and noses with masks or other face coverings when they are in the following situations:
 - (1) Inside, or in line to enter, any indoor public space;
 - (2) 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;
 - (3) Waiting for or riding on public transportation or while in a taxi, private car service, or ride-sharing vehicle; or,
 - (4) 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.

- (b) The persons responsible for all businesses or organizations in the city must require all employees, customers, visitors, members, or members of the public to wear a mask or other face covering as follows:
 - (1) 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;
 - (2) Employees, when working in any space where food is prepared or packaged for sale or distribution to others;
 - (3) Employees, when working in or walking through common areas, such as hallways, stairways, elevators, and parking facilities;
 - (4) Customers, members, visitors, or members of the public, when in a facility managed by the business or organization; or
 - (5) 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.

- (c) The following individuals are exempt from wearing masks or other face coverings in the situations described in subsections (a) and (b):
 - (1) 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;
 - (2) 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; provided, that the foregoing exemption shall not apply to the extent such a person is capable of wearing a mask or face covering (such as a plastic face shield) that does not impair such medical condition, mental health condition, or disability;
 - (3) Persons who are deaf or hard of hearing, or communicating with a person who is deaf or hard of hearing, where the ability to see the mouth is essential for communication; provided, that the foregoing exemption shall not apply to the extent such a person is capable of wearing a mask or face covering (such as a plastic face shield) that does not inhibit such communication;
 - (4) 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;
 - (5) 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;
 - (6) 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;
 - (7) 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;
 - (8) 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;
 - (9) Persons engaged in a court-related proceeding held or managed by the Kansas Judiciary;

- (10) Persons engaged in public safety, first responder, fire, public health, or other medical and medication operations or services where the wearing of a mask is not practicable under the given circumstances; and,
 - (11) Persons engaged in any lawful activity during which wearing a mask or other face covering is prohibited by law.
- (d) 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).

Sec. 22-206. Mask or other face coverings; penalties; enforcement.

- (a) A violation of any provision of Section 22-205 shall be punished as follows:
- (1) For a first conviction, the person shall be punished with a fine of \$5.
 - (2) For a second conviction, the person shall be punished with a fine of \$10.
 - (3) For a third or subsequent conviction, the person shall be punished by a fine of \$20.
- (b) The person responsible for any business or organization that does not comply with Section 22-205(b) 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.

Sec. 22-207. Mask or other face coverings; effective term. The provisions of Section 22-204 through Section 22-207 of the city code shall be in effect until 11:59 p.m. on January 31, 2021, unless further extended by ordinance of the governing body.

Section 2. This ordinance shall take effect and be in force from and after its passage, approval, and publication in the official city newspaper.

PASSED and APPROVED by the Governing Body on the 19th day of November 2020.

/s/ Myron J. "Mike" Griswold
Myron J. "Mike" Griswold, Mayor

{SEAL}

ATTEST:

/s/ Carla K. Williamson
Carla K. Williamson CMC, City Clerk