



IN THE DISTRICT COURT OF GARFIELD COUNTY
STATE OF OKLAHOMA

IN RE: PETITION TO RECALL WARD THREE]
CITY COMMISSIONER BEN EZZELL]
SUBMITTED TO THE CITY OF ENID ON]
AUGUST 4, 2020,]

BEN EZZELL,]

Plaintiff,]

vs.]

ALISSA LACK, CITY CLERK,]
CITY OF ENID, OKLAHOMA, and]

GEORGE PANKONIN, MAYOR,]
CITY OF ENID, OKLAHOMA;]

Defendants.]

FILED
GARFIELD COUNTY, OKLA

OCT 20 2020

JANELLE M. SHARP
COURT CLERK
BY: *[Signature]*
DEPUTY COURT CLERK

Case No. CV-2020-105

PLAINTIFF'S SUPPLEMENTAL BRIEF

COMES NOW the Plaintiff, Ben Ezzell, Ward Three City Commissioner for the City of Enid (hereinafter referred to as "Ezzell"), and at the Court's request submits this Supplemental Brief in lieu of an in-person hearing¹ and alleges and states that:

ARGUMENT AND AUTHORITY

1. *Clapsaddle* applied the procedural rubric for referendum and initiative petitions to recall elections, which includes the obligation for an affirmative statement of truthfulness pursuant to 34 Okla. Stat. §3.

Clapsaddle v. Blevins, 66 P.3d 352 (Okla. 1998) is the sole case cited by any party involved in this matter which actually makes a ruling relating to the right to object to a recall petition. This Court must follow the Oklahoma Supreme Court's direction in *Clapsaddle*, which

¹ Plaintiff notes that the hearing scheduled for October 6, 2020 was canceled because the Garfield County Court Clerk's office was shut down for most of a week due to roughly half the office testing positive for COVID-19 (according to County Commissioner, James Simunek, as quoted in 10/14/2020 Enid News & Eagle article). As described in the Affidavit of City of Enid City Attorney Carol Lahman, the entire recall effort and the organizing impetus of the "Enid Freedom Fighters" is in response to Ezzell's desire to implement public health precautions in line with the CDC recommendations for responding to the global pandemic we are all still living through. The White House Coronavirus Task Force Reports have listed Enid and Garfield County as being in the "red" zone (of highest risk) for months. Every measure advocated for by Ezzell is now present on Page 1 of the White House Coronavirus Task Force Report for Oklahoma dated 10.11.2020 under the heading "RECOMMENDATIONS". A copy of this report is attached hereto, both figuratively and literally, as Exhibit "1".

lumps together initiative, referendum, and recall elections, stating that they “all constitute constitutionally sanctioned methods for popular intervention in the affairs of government”. *Id* at ¶13. In doing so, the Court declared that all three must be treated as falling under the same *procedural rubric*. That rubric cannot rationally require adherence only to one single statute. *Clapsaddle* directly addresses 11 Okla. Stat. §15-104, but that single statute is meaningless without looking to the rest of Article XV of Title 11. Ezzell, the City of Enid, and the Intervenor have a fundamental disagreement about how the Court intended to use the term “rubric” in *Clapsaddle*, which this Court must resolve before any other issue at hand can be addressed. “Rubric” is not a term that has been extensively used by the Oklahoma Supreme Court and so investigation by Plaintiff of other decisions using the same word proved to be largely fruitless. The Black’s Law Dictionary definition² is footnoted below and also fails to clarify. The question is ultimately whether “procedural rubric” narrowly means the one statute at issue in *Clapsaddle* or whether it more generally means the associated statutory procedure. The latter is the obvious meaning and is the only possible holding of *Clapsaddle*. The Court’s application of the procedure for initiative and referendum petitions to that of recall elections must include those statutory provisions necessary to make the decision applicable in practice.

The *Clapsaddle* decision itself is not lengthy and the applicable Section II consists of only five paragraphs (¶12 through ¶16). I will not waste this Court’s time regurgitating the decision or reiterating the argument made in Plaintiff’s Objection and Protest to Recall Petition. Despite the age of the *Clapsaddle* decision, the infrequency of municipal recall elections means that we may be facing an issue of first impression. No party in this action has been able to point to any judicial interpretation of the issue, we have only argued over the meaning of a term. The Intervenor has pointed the Court to *Tulsa Fire Fighters Ass’n, IAFF Local 176, AFL-CIO v. City of Tulsa, Oklahoma*, 834 F.Supp.2d 1277 (N.D.Okla. 2011) which briefly discusses the issue by stating “[i]n

² **rubric** (roo-brik) [fr. Latin *rubrica* “red earth,” from the practice of printing the exceptional parts of old manuscripts in red letters] (16c) 1. The title of a statute or code <the rubric of the relevant statute is the Civil Rights Act of 1964>. 2. A category or designation <assignment of rights falls under the rubric of contract law>. 3. An introductory or explanatory note; a preface <a well-known scholar wrote the rubric to the book’s fourth edition>. 4. An established rule, custom, or law <what is the rubric in the Northern District of Texas regarding appearance at docket call?>. 5. An authoritative rule, esp. for conducting a public worship service <the rubric dictates whether the congregation should stand or kneel>. — **rubrical**, *adj.*

Clapsaddle, the Oklahoma Supreme Court held that the scheduling and setting of a special municipal election..." which would suggest to Plaintiff that *Clapsaddle* does indeed apply more broadly than only to the method for contesting the sufficiency of a recall petition. The Intervenor could not point to any other jurisprudence which would support their argument for a narrow construction of the phrase "procedural rubric" except for a federal case from the Northern District that barely addresses *Clapsaddle* and would be at best persuasive. Justice Opala's word choice in *Clapsaddle* is clear, the Court decisively lumped together three methods for the public to directly exercise control over the affairs of government, and the Intervenor errs in their belief that the recall petition could ignore simple procedural requirements that address transparency and fairness.

In its Answer, the City of Enid neither admits nor denies whether or not the all the state statutes on initiative and referendum apply to city recall petitions. The City of Enid does note that 34 Okla. Stat. §3 is specific to initiative and referendum petitions. Despite the fact that the language of 11 Okla. Stat. §15-104 is written to address only initiative and referendum petitions, there is no question that *Clapsaddle* includes recall petitions in the application thereof, and it does so without the term "recall" appearing anywhere in §15-104.

There is no question that if this Court determines that the procedural rubric from initiative and referendum petitions has been applied to recall petitions by the Oklahoma Supreme Court, the recall petition in question here fails to meet several statutory requirements as outlined in Plaintiff's Protest, that the City Clerk's verification is therefore invalid, and that the recall petition should be deemed insufficient.

2. Section A.7.7. of the City of Enid Charter has an affirmative obligation that one of the signers of each page of a recall petition must make an oath that the statements therein are true as he believes, and the failure to include an affirmation as to truth invalidates the recall petition.

The requirement for an oath of truthfulness in Section A.7.7. of the City of Enid Charter is not optional, but specifically requires that it SHALL be made by one of the signers of each page of the petition. The Charter does not require that any proof of the truthfulness be asserted, only that the signer believes it to be true. Nowhere on any page of the recall petition or amendment to recall petition will you find the words true, truth, belief, believe, or anything of the like. The

affirmations on each page of the recall petition (and amendment) address specifically identity of the signers and their status as registered voters and nothing else. The statements which are notarized (as affirmations) are only related to signer identity. No signer or circulator makes a single representation about truthfulness or belief in the underlying statements in any way shape or form.

The City of Enid, in paragraph 12 of its Answer, admits that the City Charter requires the truth affirmation. Paragraph 3 of the City Clerk's Affidavit acknowledges the absence of a statement regarding truth, but does not address how that requirement was satisfied in her determination of sufficiency of the petition. In paragraph 5 of her Affidavit, the City Attorney states that she did inform the recall activists³ of the requirement for the truthfulness oath, and yet they did not include such language in either the initial petition or the amendment. In her Notice of Sufficiency, the City Clerk acknowledges the lack of any statement regarding truthfulness, but states that it is "implicitly clear" that the circulators believe the statements on the petition. The City of Enid Charter does not allow for implicit clarity in this matter. The Intervenor has acknowledged the requirements of Section A.7.7. in their Motion to Intervene, but they do also do not ever argue that any statement of truthfulness was made.

A simple assertion of truth is not some obscure legislative enactment. Plaintiff, through *Clapsaddle* as discussed above and as more thoroughly briefed in Plaintiff's Objection, applies the holding from *Community Gas and Service Company Inc. v. Walbaum*, 404 P.2d 1104 (Okla. 1965) to the fraud requirement in 34 Okla. Stat. §3. Even if the Court were to rule that *Clapsaddle* can only be narrowly applied, the holding from *Community Gas* is persuasive as to the strict requirement of the truthfulness oath in the City of Enid Charter. The Court found that "[i]f a statutory provision is essential to guard against fraud, corruption or deception... such provision must be viewed as an indispensable requirement and failure to substantially comply therewith is fatal." *Id* at 1016. There is no legal basis for the City Clerk to rely on implicit clarity when the City Charter states that something shall be required. At no point in the City of Enid Charter or State

³ The City Attorney's role, according to the City of Enid website, is to act as primary legal counsel to the Mayor and Board of Commissioners. Ezzell was at the time, and still is, a member of the Board of Commissioners, and as such Carol Lahman's primary duty was to act as his legal counsel in his official capacity. By advising the recall activists, Carol Lahman was in the difficult spot of advising a third party against the interest of her primary client. The Intervenor makes baseless accusations regarding impropriety by Carol Lahman, but in reality her duty was not to the recall activists but specifically to Ezzell.

Law will you find that the City Clerk has the right to ignore a mandatory requirement in favor of some undefined implicit judgment. The Intervenor takes pains to distinguish "and" from "or", but the operative word in this matter is "shall".

The recall petition should not have been deemed sufficient by the City Clerk as she has admitted her own awareness of this deficiency, and as such this Court should now deem the recall petition insufficient for failing to meet the obligatory requirement of Section A.7.7. of the City of Enid Charter.

3. The seven stated reasons to recall Ezzell fall short of even the minimal standard of a basis provided for recall of an elected official in the City of Enid Charter.

Although the City of Enid Charter does not require removal only for cause, it does require that petitioners include a general statement of grounds and charges, which implies that there is some minimal threshold which must be met. The City of Enid, in its Answer, argues that recall is a remedy for any official who is not "giving satisfaction", which again implies some minimal threshold. Surely it would not be the case that the removal of an elected official could be put on a ballot for something entirely frivolous, such as being too short or being left-handed. Plaintiff argues that the seven stated reason listed on the recall petition are so baseless as to meet any threshold requirement for grounds and charges.

First, it should be noted that there is no such entity as the "Enid Freedom Fighters" aside from a closed group on Facebook. Intervenor is acting on behalf of themselves as signers of the recall petition. Further, although the intervenors each signed a recall petition, no petition actually asserted the truth of the underlying assertions and none of the intervenors affirmed that they believe them to be true. Much of what is asserted against Ezzell is so vague as to be meaningless.

No evidence has been presented showing that Ezzell has demonstrated conduct unbecoming of an elected official aside from the text of an email he privately wrote to the City Manager, City Attorney, and the rest of the City Council. The circumstances around the email in and the spurious reasons behind its use as a rallying point are worth noting. The email itself is attached hereto as Exhibit "2". Said private email was immediately forwarded to Brian Henry by

Ward 1 Council Member Jerry Allen⁴. Mr. Henry is an Intervenor in this action, employed by the City of Perry as a Code Enforcement Officer, and has expressed some intent to run for Enid City Council. According to Paragraph 2 of the Affidavit of City Attorney, Carol Lahman, Mr. Henry had been pursuing some recall efforts against Ezzell as early as July 15, 2020, following a city council meeting relating to COVID-19. The private email in question expressed frustration with the Enid Chief of Police, Brian O'Rourke, who had at a previous meeting (and in numerous other instances) threatened not to enforce a simple mask mandate even if the City Council approved it⁵. The Assistant Chief of Police enlisted help from a local pastor and founder of Enid Freedom Fighters, Wade Burleson⁶, to target Ezzell for removal not because of masks (which the Assistant Chief of Police professed to be indifferent about)⁷, but because Ezzell had sought additional civilian oversight over excessive force and racial bias complaints made against police officers⁸. Burleson even went so far as to inappropriately attempt to influence this Court on a political matter in his capacity as pastor of his church⁹.

The threatened use of force listed in the recall petition was a \$9 fine¹⁰. The disrespect to the police chief was not very objectionable to the police chief himself¹¹, and was not without basis by Ezzell. The mask mandate plans evolved and changed, but were always posted on meeting agendas and no evidence has ever been presented otherwise. Ezzell's public health recommendations were not arbitrary, but came from the Oklahoma State Department of Health. Many constituents expressed varying views, as can be seen by the public comment in many meetings. No evidence of abuse of public trust has ever been presented, or even asserted with specificity.

Ezzell asserts that the charges alleged in the recall petition are pretextual, meaningless, specifically allowed, and/or objectively and obviously false and do not present grounds and

⁴ See email from Allen to Henry attached hereto as Exhibit "3".

⁵ See emails and screenshots from Brian O'Rourke attached hereto as Exhibit "4".

⁶ See screenshot from EFF Facebook Group attached hereto as Exhibit "5".

⁷ See screenshot from Assistant Chief of Police, Brian Skaggs attached hereto as Exhibit "6".

⁸ See email conversation between Skaggs and Burleson attached hereto as Exhibit "7".

⁹ See letter from Burleson to Judge Lafferty attached hereto as Exhibit "8".

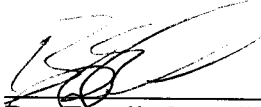
¹⁰ See attached email and draft ordinance relating to the proposed mask mandate attached hereto as Exhibit "9".

¹¹ See email from Brian O'Rourke attached hereto as Exhibit "10".

charges as required in the City of Enid Charter which even meet the low standard of failing to "give satisfaction" as an elected official. As such, the recall petition should be deemed insufficient.

DATED this 20th day of October, 2020.

Respectfully submitted,



Ben Ezzell, OBA #30860

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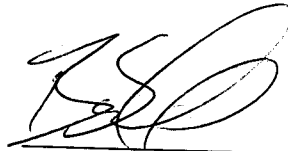
Attorneys for Plaintiff

CERTIFICATE OF MAILING

This will certify that on the 20th day of October, 2020, a true and correct copy of the above and foregoing Supplemental Brief was mailed via First Class Mail, postage prepaid, as follows:

Tony G. Puckett
McAfee & Taft, PC
Tenth Floor
211 N Robinson
Oklahoma City, OK 73012
Counsel for Defendants, Alissa Lack and George Pankonin

Stephen Jones
214-A North Independence
Enid, OK 73701
Counsel for Proposed Intervenors

A handwritten signature in black ink, appearing to read 'B. Ezzell', is written over a horizontal line.

Ben Ezzell



STATE REPORT
10.11.2020

OKLAHOMA

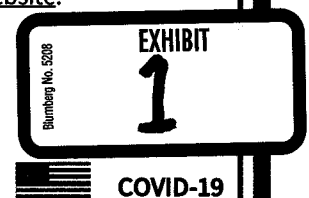
SUMMARY

- Oklahoma is in the red zone for cases, indicating 101 or more new cases per 100,000 population last week, with the 9th highest rate in the country. Oklahoma is in the orange zone for test positivity, indicating a rate between 8.0% and 10.0%, with the 8th highest rate in the country.
- Oklahoma has seen stability in new cases and a decrease in test positivity over the last week.
- The following three counties had the highest number of new cases over the last 3 weeks: 1. Oklahoma County, 2. Tulsa County, and 3. Cleveland County. These counties represent 36.6% of new cases in Oklahoma.
- 79% of all counties in Oklahoma have moderate or high levels of community transmission (yellow, orange, or red zones), with 48% having high levels of community transmission (red zone).
- During the week of Sep 28 - Oct 4, 12% of nursing homes had at least one new resident COVID-19 case, 23% had at least one new staff COVID-19 case, and 5% had at least one new resident COVID-19 death.
- Oklahoma had 190 new cases per 100,000 population in the last week, compared to a national average of 100 per 100,000.
- Current staff deployed from the federal government as assets to support the state response are: 3 to support operations activities from FEMA.
- Between Oct 3 - Oct 9, on average, 135 patients with confirmed COVID-19 and 83 patients with suspected COVID-19 were reported as newly admitted each day to hospitals in Oklahoma. An average of 87% of hospitals reported either new confirmed or new suspected COVID patients each day during this period; therefore, this may be an underestimate of the actual total number of COVID-related hospitalizations. Underreporting may lead to a lower allocation of critical supplies.

RECOMMENDATIONS

- We have included cases, test positivity, and deaths by month in the back of your packet to show the time sequence in Oklahoma and the country as a whole. These demonstrate the impact of comprehensive mitigation efforts when implemented effectively and that partial or incomplete mitigation leads to prolonged community spread and increased fatalities.
- Community spread continues in Oklahoma in both rural and urban areas. Mitigation efforts should increase to include mask wearing, physical distancing, hand hygiene, and avoiding crowds in public and social gatherings in private to stop the increasing spread among residents of Oklahoma.
- There continue to be cases among nursing home residents and staff; common sense mitigation efforts can prevent transmission among the vulnerable populations.
- With the rise in cases among individuals 65 years and older, provide information through senior citizen networks to alert them to take precautionary measures.
- Use the Abbott BinaxNOW for surveillance testing in the same populations weekly. This will provide information on local transmission changes. Establish and deploy targeted testing teams (not drive-through testing) who can be rapidly deployed to communities based on signals from surveillance testing. Populations for surveillance can include K-12 teachers, fire and police force, and nursing home and correctional facility staff.
- Antivirals and antibodies have the most impact when used early in hospital admissions (within 48 hours). Ensure hospitals are effectively administering these medications to prevent morbidity and mortality.
- Work with university students to keep cases low, with the goal of low transmission in preparation for Thanksgiving. Implement antibody testing to understand fraction of students who have been infected and plan for spring semester accordingly. Test all university students before dismissing them for Thanksgiving.
- Tribal Nations: Increase testing, continue to expand culturally-specific public health education, developed with community leaders, especially as tribal social events pick back up. Conduct prompt contact tracing on all cases and provide housing and supplies to support immediate quarantine of contacts and isolation of cases.
- Specific, detailed guidance on community mitigation measures can be found on the [CDC website](#).

The purpose of this report is to develop a shared understanding of the current status of the pandemic at the national, regional, state and local levels. We recognize that data at the state level may differ from that available at the federal level. Our objective is to use consistent data sources and methods that allow for comparisons to be made across localities. We appreciate your continued support in identifying data discrepancies and improving data completeness and sharing across systems. We look forward to your feedback.



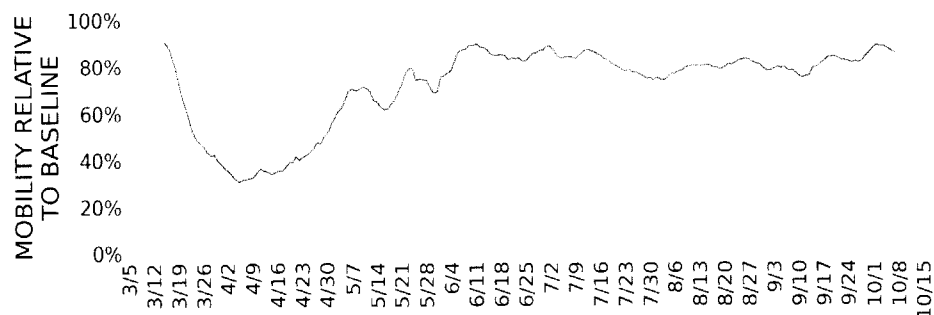


OKLAHOMA

STATE REPORT | 10.11.2020

	STATE, LAST WEEK	STATE, % CHANGE FROM PREVIOUS WEEK	FEMA/HHS REGION, LAST WEEK	UNITED STATES, LAST WEEK
NEW COVID-19 CASES (RATE PER 100,000)	7,529 (190)	+7%	47,737 (112)	327,190 (100)
VIRAL (RT-PCR) LAB TEST POSITIVITY RATE	10.0%	-0.9%*	6.3%	5.8%
TOTAL VIRAL (RT-PCR) LAB TESTS (TESTS PER 100,000)	30,279** (765)	-1%**	476,967** (1,117)	6,936,323** (2,113)
COVID-19 DEATHS (RATE PER 100,000)	47 (1.2)	-8%	856 (2.0)	4,908 (1.5)
SNFs WITH ≥1 NEW RESIDENT COVID-19 CASE (≥1 NEW STAFF CASE)	12% (23%)	+2%* (-4%*)	13% (22%)	10% (21%)
SNFs WITH ≥1 NEW RESIDENT COVID-19 DEATH	5%	+3%*	4%	4%

MOBILITY



* Indicates absolute change in percentage points.

** Due to delayed reporting, this figure may underestimate total diagnostic tests and week-on-week changes in diagnostic tests.

DATA SOURCES - Additional data details available under METHODS**Note:** Some dates may have incomplete data due to delays in reporting. Data may be backfilled over time, resulting in week-to-week changes.**Cases and Deaths:** State values are calculated by aggregating county-level data from USAFacts; therefore, the values may not match those reported directly by the state. Data is through 10/9/2020; last week is 10/3 - 10/9, previous week is 9/26 - 10/2.**Testing:** CELR (COVID-19 Electronic Lab Reporting) state health department-reported data through 10/7/2020. Last week is 10/1 - 10/7, previous week is 9/24 - 9/30.**Mobility:** Descartes Labs. This data depicts the median distance moved across a collection of mobile devices to estimate the level of human mobility within a county. The 100% represents the baseline mobility level prior to the pandemic; lower percent mobility indicates less population movement. Data is anonymized and provided at the county level. Data through 10/7/2020.**SNFs:** Skilled nursing facilities. National Healthcare Safety Network. Data are reported separately for cases among residents and staff. Last week is 9/28-10/4, previous week is 9/21-9/27.



OKLAHOMA

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COVID-19 COUNTY AND METRO ALERTS*

Top 12 shown in table (full lists below)

	METRO AREA (CBSA) LAST WEEK	COUNTY LAST WEEK
LOCALITIES IN RED ZONE	12 ▲ (+2) Tulsa Woodward Shawnee Enid Elk City Weatherford Durant Fort Smith Miami Altus McAlester Bartlesville	37 ▲ (+1) Tulsa Woodward Canadian Pottawatomie Garfield Grady Beckham Custer Le Flore Bryan Delaware Creek Oklahoma Osage Rogers Muskogee Cherokee Caddo Texas Pontotoc McIntosh Murray Love Hughes Cleveland Payne Comanche Wagoner Seminole Stephens Carter Atoka Washita Pawnee Marshall
LOCALITIES IN ORANGE ZONE	5 ▼ (-1) Oklahoma City Muskogee Tahlequah Guymon Ada	13 ▲ (+1) Oklahoma Osage Rogers Muskogee Cherokee Caddo Texas Pontotoc McIntosh Murray Love Hughes Cleveland Payne Comanche Wagoner Seminole Stephens Carter Atoka Washita Pawnee Marshall
LOCALITIES IN YELLOW ZONE	4 ▼ (-1) Stillwater Lawton Ardmore Duncan	11 ▲ (+5) Oklahoma Osage Rogers Muskogee Cherokee Caddo Texas Pontotoc McIntosh Murray Love Hughes Cleveland Payne Comanche Wagoner Seminole Stephens Carter Atoka Washita Pawnee Marshall

Change from previous week's alerts:

▲ Increase

■ Stable

▼ Decrease

All Red Counties: Tulsa, Woodward, Canadian, Pottawatomie, Garfield, Grady, Beckham, Custer, Le Flore, Bryan, Delaware, Creek, Sequoyah, McClain, Mayes, Ottawa, Logan, Jackson, Lincoln, McCurtain, Pittsburg, Craig, Washington, Garvin, Adair, Kingfisher, Johnston, Haskell, Choctaw, Pushmataha, Okfuskee, Roger Mills, Blaine, Major, Kiowa, Alfalfa, Latimer

All Orange Counties: Oklahoma, Osage, Rogers, Muskogee, Cherokee, Caddo, Texas, Pontotoc, McIntosh, Murray, Love, Hughes, Nowata

* Localities with fewer than 10 cases last week have been excluded from these alerts.

Note: Lists of red, orange, and yellow localities are sorted by the number of new cases in the last 3 weeks, from highest to lowest. Some dates may have incomplete data due to delays in reporting. Data may be backfilled over time, resulting in week-to-week changes.

DATA SOURCES - Additional data details available under METHODS

Cases and Deaths: State values are calculated by aggregating county-level data from USAFacts; therefore, the values may not match those reported directly by the state. Data is through 10/9/2020; last week is 10/3 - 10/9, three weeks is 9/19 - 10/9.

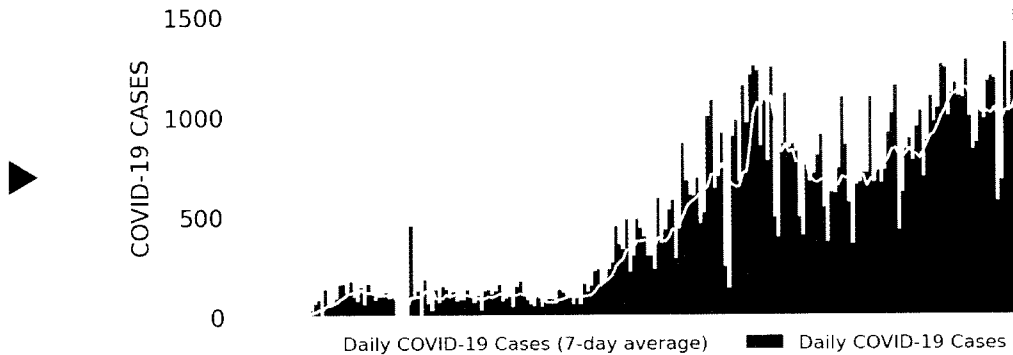
Testing: HHS Protect laboratory data (provided directly to Federal Government from public health labs, hospital labs, and commercial labs) through 10/7/2020. Last week is 10/1 - 10/7.



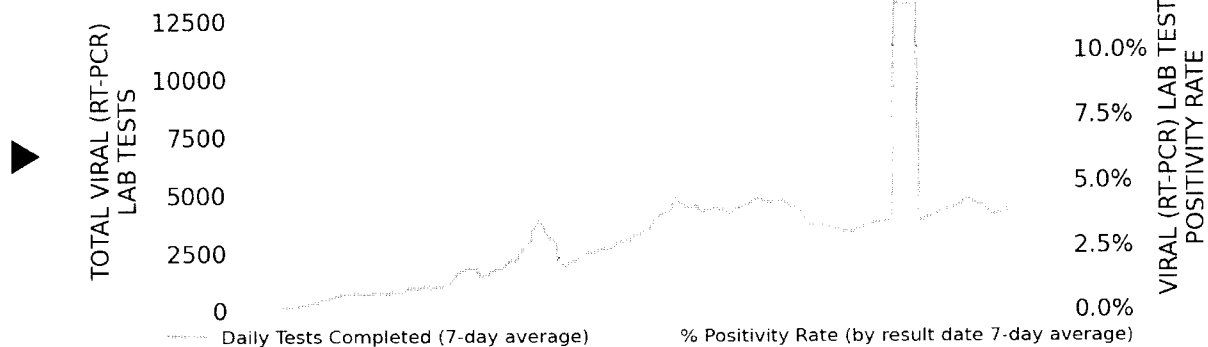
OKLAHOMA

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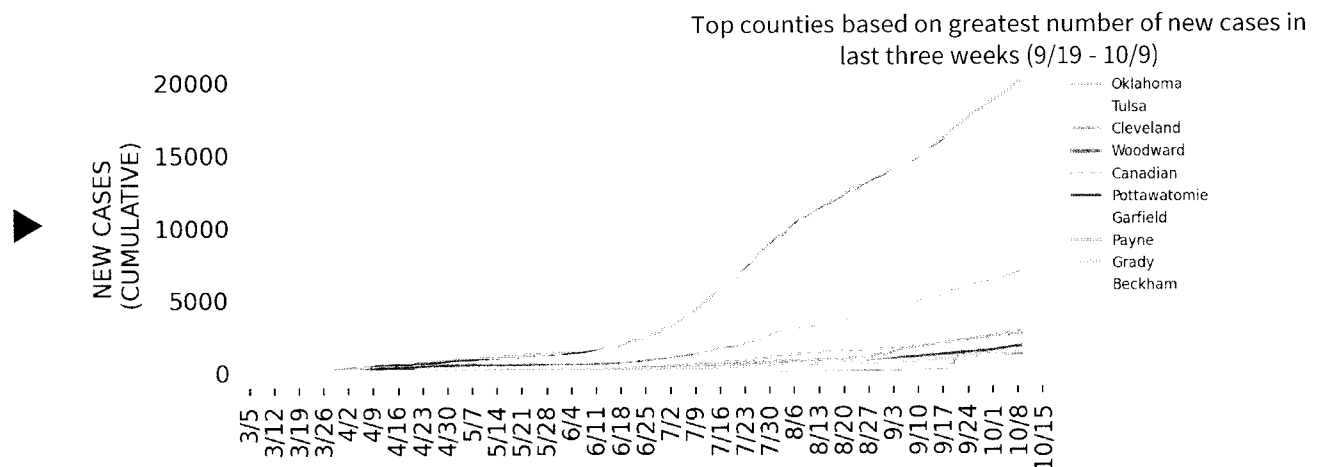
NEW CASES



TESTING



TOP COUNTIES



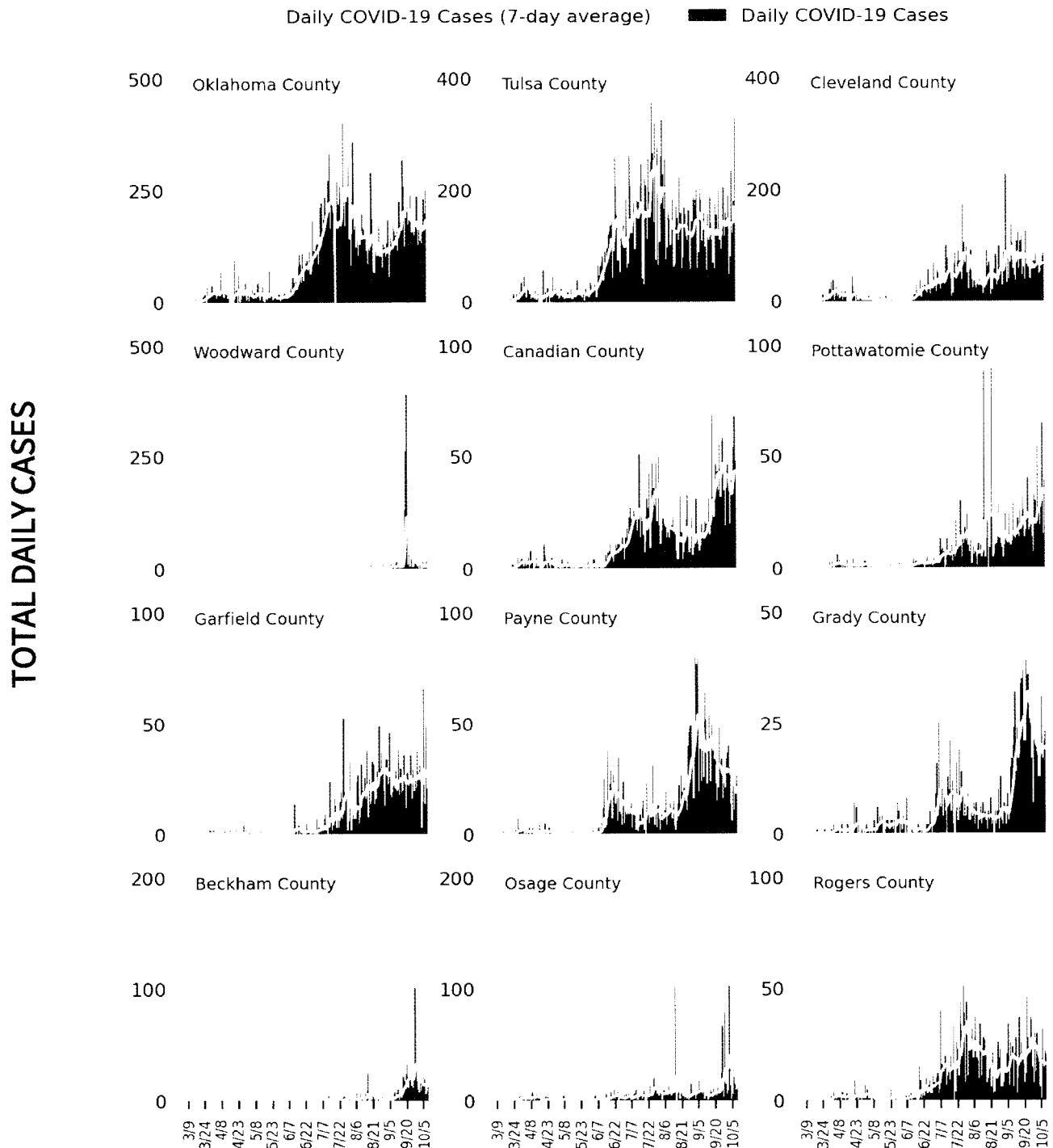
DATA SOURCES – Additional data details available under METHODS

Note: Some dates may have incomplete data due to delays in reporting. Data may be backfilled over time, resulting in week-to-week changes.
Cases: State values are calculated by aggregating county-level data from USAFacts; therefore, the values may not match those reported directly by the state. Data is through 10/9/2020.

Testing: HHS Protect laboratory data (provided directly to Federal Government from public health labs, hospital labs, and commercial labs) through 10/7/2020.



Top 12 counties based on number of new cases in the last 3 weeks



DATA SOURCES – Additional data details available under METHODS

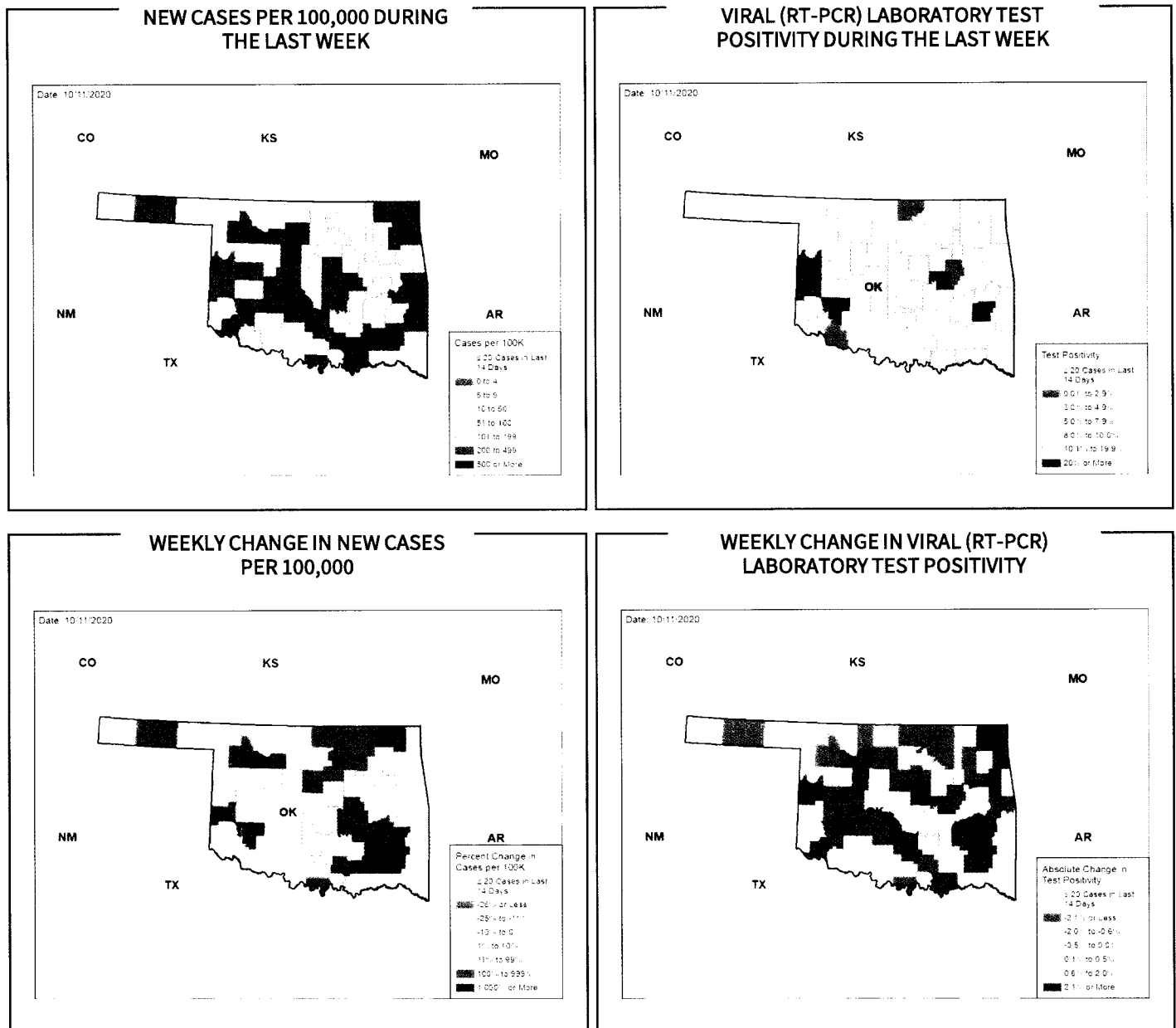
Cases: State values are calculated by aggregating county-level data from USAFacts; therefore, the values may not match those reported directly by the state. Data is through 10/9/2020. Last 3 weeks is 9/19 - 10/9.



OKLAHOMA

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CASE RATES AND VIRAL LAB TEST POSITIVITY DURING THE LAST WEEK



DATA SOURCES – Additional data details available under METHODS

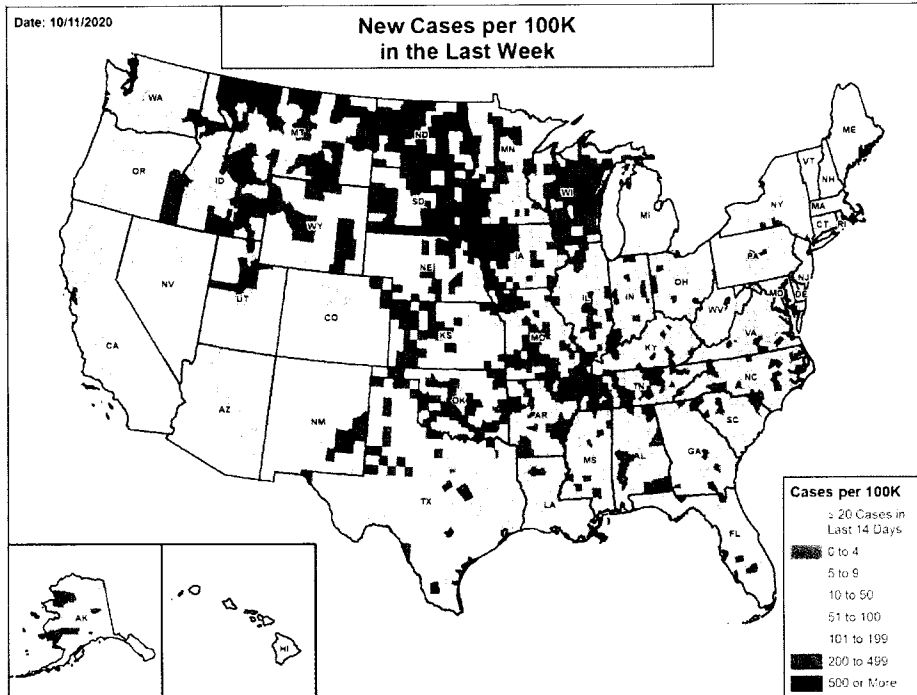
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Cases: State values are calculated by aggregating county-level data from USAFacts; therefore, the values may not match those reported directly by the state. Data is through 10/9/2020. Last week is 10/3 - 10/9, previous week is 9/26 - 10/2.

Testing: HHS Protect laboratory data (provided directly to Federal Government from public health labs, hospital labs, and commercial labs) through 10/7/2020. Last week is 10/1 - 10/7, previous week is 9/24 - 9/30.



National Picture

NEW CASES PER 100,000 LAST WEEK

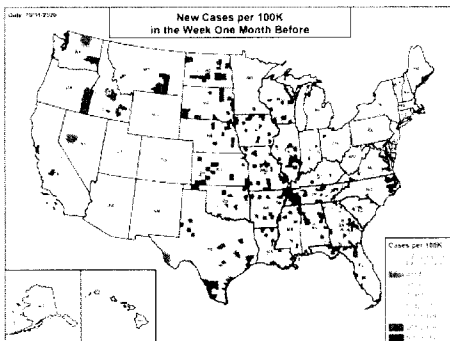


NATIONAL RANKING OF NEW CASES PER 100,000 LAST WEEK

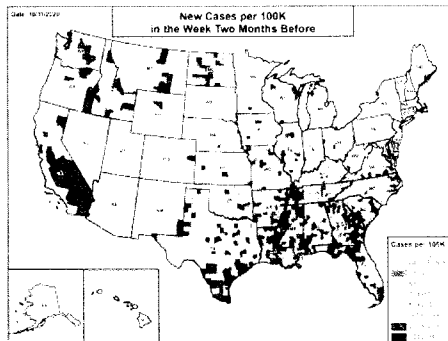
National Rank	State	National Rank	State
1	ND	27	TX
2	SD	28	DE
3	MT	29	CO
4	WI	30	VA
5	UT	31	FL
6	ID	32	OH
7	IA	33	GA
8	WY	34	MI
9	OK	35	WV
10	TN	36	LA
11	AR	37	MD
12	KY	38	PA
13	KS	39	NJ
14	NE	40	MA
15	MO	41	DC
16	AK	42	AZ
17	MN	43	CA
18	MS	44	OR
19	AL	45	NY
20	IN	46	WA
21	SC	47	HI
22	IL	48	CT
23	NC	49	NH
24	RI	50	ME
25	NV	51	VT
26	NM		

NEW CASES PER 100,000 IN THE WEEK:

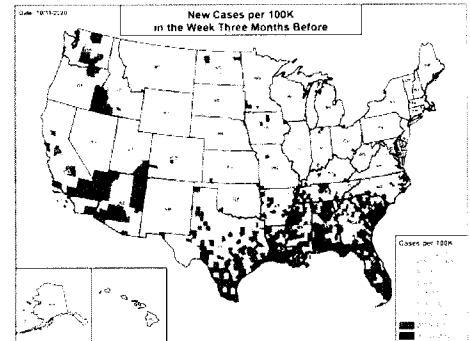
ONE MONTH BEFORE



TWO MONTHS BEFORE



THREE MONTHS BEFORE



DATA SOURCES

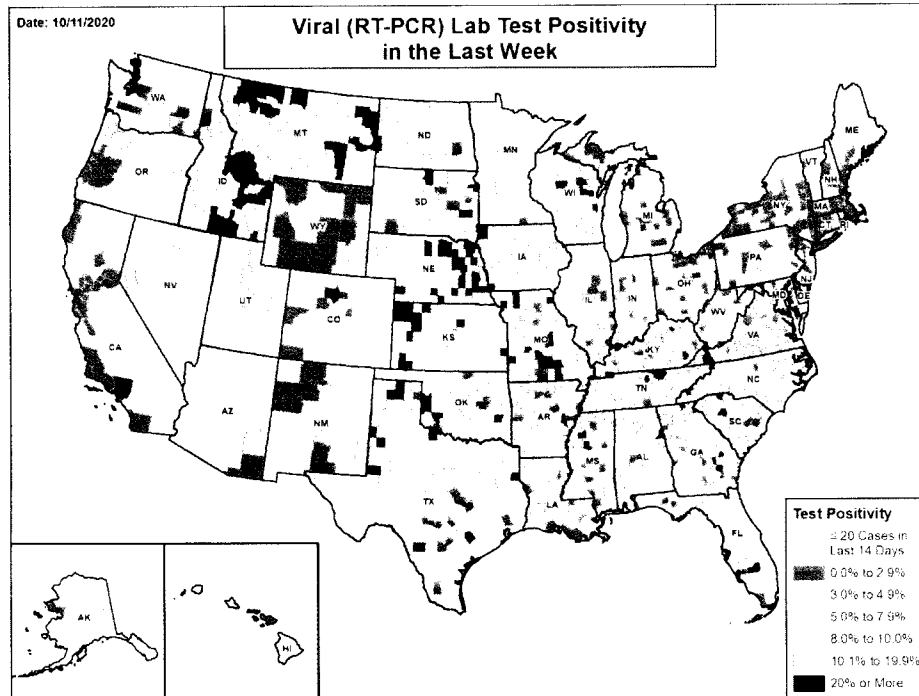
Note: Some dates may have incomplete data due to delays in reporting. Data may be backfilled over time, resulting in week-to-week changes.

Cases: County-level data from USAFacts through 10/9/2020. Last week is 10/3 - 10/9; the week one month before is 9/5 - 9/11; the week two months before is 8/8 - 8/14; the week three months before is 7/11 - 7/17.



National Picture

VIRAL (RT-PCR) LAB TEST POSITIVITY LAST WEEK

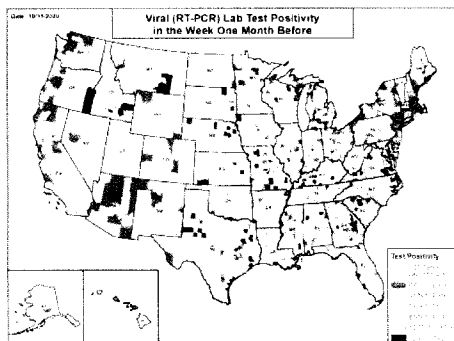


NATIONAL RANKING OF TEST POSITIVITY LAST WEEK

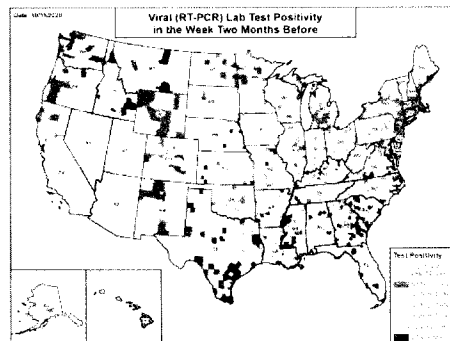
National Rank	State	National Rank	State
1	NE	27	MN
2	MT	28	FL
3	ID	29	IL
4	UT	30	NM
5	CA	31	LA
6	SD	32	AZ
7	WI	33	WY
8	OK	34	WV
9	OR	35	PA
10	MO	36	MD
11	IA	37	CO
12	KY	38	MI
13	KS	39	HI
14	SC	40	OH
15	NV	41	WA
16	ND	42	NJ
17	MS		
18	TN		
19	AL		
20	AR		
21	TX		
22	IN		
23	NC		
24	AK		
25	VA		
26	GA		

VIRAL (RT-PCR) LAB TEST POSITIVITY IN THE WEEK:

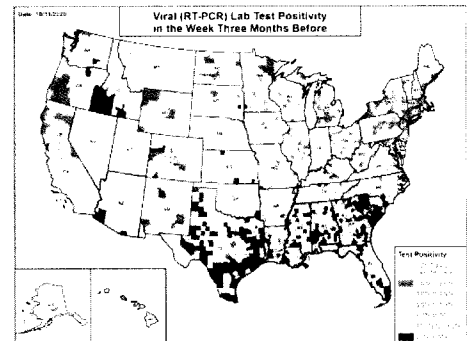
ONE MONTH BEFORE



TWO MONTHS BEFORE



THREE MONTHS BEFORE



DATA SOURCES

Note: Some dates may have incomplete data due to delays in reporting. Data may be backfilled over time, resulting in week-to-week changes.

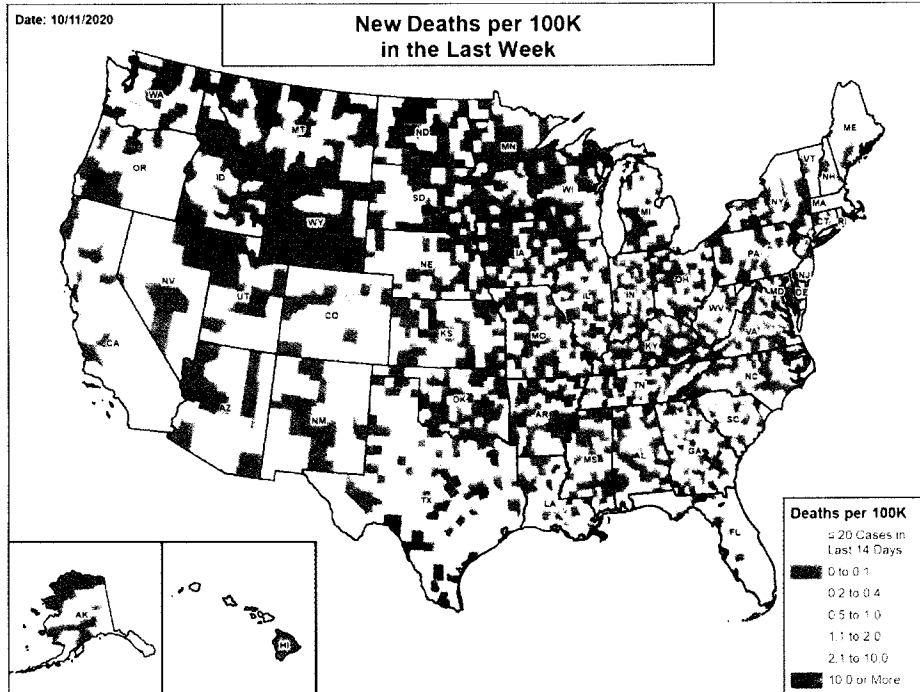
Testing: Combination of CELR (COVID-19 Electronic Lab Reporting) state health department-reported data and HHS Protect laboratory data (provided directly to Federal Government from public health labs, hospital labs, and commercial labs) through 10/7/2020. Last week is 10/1 - 10/7; the week one month before is 9/3 - 9/9; the week two months before is 8/6 - 8/12; the week three months before is 7/9 - 7/15.



National Picture

NEW DEATHS PER 100,000 LAST WEEK

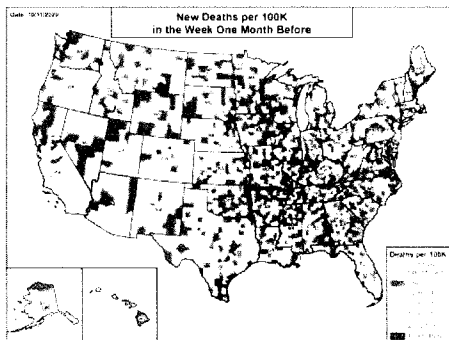
NATIONAL RANKING OF NEW DEATHS PER 100,000 LAST WEEK



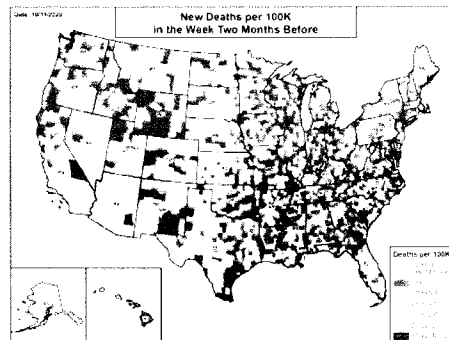
National Rank	State	National Rank	State
1	ND	27	RI
2	AR	28	MN
3	SD	29	CA
4	MO	30	UT
5	TN	31	PA
6	FL	32	NE
7	MS	33	KY
8	SC	34	MI
9	GA	35	DE
10	KS	36	OR
11	AL	37	CO
12	IA	38	OH
13	TX	39	AZ
14	LA	40	NM
15	MT	41	DC
16	ID	42	NH
17	HI	43	WA
18	IL	44	MD
19	IN	45	CT
20	NV	46	NY
21	WI	47	AK
22	NC	48	NJ
23	MA		
24	OK		
25	WV		
26	VA		

NEW DEATHS PER 100,000 IN THE WEEK:

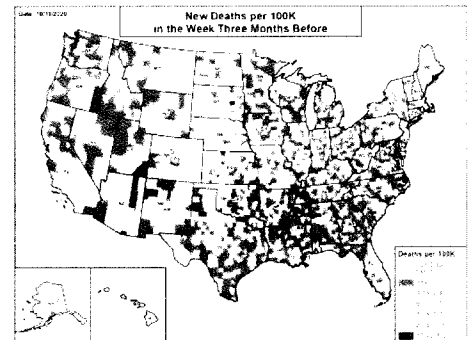
ONE MONTH BEFORE



TWO MONTHS BEFORE



THREE MONTHS BEFORE



DATA SOURCES

Note: Some dates may have incomplete data due to delays in reporting. Data may be backfilled over time, resulting in week-to-week changes.

Deaths: County-level data from USAFacts through 10/9/2020. Last week is 10/3 - 10/9; the week one month before is 9/5 - 9/11; the week two months before is 8/8 - 8/14; the week three months before is 7/11 - 7/17.



METHODS

STATE REPORT | 10.11.2020

COLOR THRESHOLDS: Results for each indicator should be taken in context of the findings for related indicators (e.g., changes in case incidence and testing volume). Values are rounded before color classification.

Metric	Dark Green	Light Green	Yellow	Orange	Red
New cases per 100,000 population per week	≤4	5 – 9	10 – 50	51 – 100	≥101
Percent change in new cases per 100,000 population	≤-26%	-25% – -11%	-10% – 0%	1% – 10%	≥11%
Diagnostic test result positivity rate	≤2.9%	3.0% – 4.9%	5.0% – 7.9%	8.0% – 10.0%	≥10.1%
Change in test positivity	≤-2.1%	-2.0% – -0.6%	-0.5% – 0.0%	0.1% – 0.5%	≥0.6%
Total diagnostic tests resulted per 100,000 population per week	≥2001	1001 – 2000	750 – 1000	500 – 749	≤499
Percent change in tests per 100,000 population	≥26%	11% – 25%	1% – 10%	-10% – 0%	≤-11%
COVID-19 deaths per 100,000 population per week	≤0.1	0.2 – 0.4	0.5 – 1.0	1.1 – 2.0	≥2.1
Percent change in deaths per 100,000 population	≤-26%	-25% – -11%	-10% – 0%	1% – 10%	≥11%
Skilled Nursing Facilities with at least one resident COVID-19 case, death		0%		1% – 5%	≥6%
Change in SNFs with at least one resident COVID-19 case, death		≤-2%		-1% – 1%	≥2%

DATA NOTES

- Some dates may have incomplete data due to delays in reporting. Data may be backfilled over time, resulting in week-to-week changes. It is critical that states provide as up-to-date data as possible.
- Cases and deaths:** County-level data from USAFacts as of 17:35 EDT on 10/11/2020. State values are calculated by aggregating county-level data from USAFacts; therefore, values may not match those reported directly by the state. Data are reviewed on a daily basis against internal and verified external sources and, if needed, adjusted. Last week data are from 10/3 to 10/9; previous week data are from 9/26 to 10/2; the week one month before data are from 9/5 to 9/11.
- Testing:** The data presented represent viral COVID-19 laboratory diagnostic and screening test (reverse transcription polymerase chain reaction, RT-PCR) results—not individual people—and exclude antibody and antigen tests, unless stated otherwise. CELR (COVID-19 Electronic Lab Reporting) state health department-reported data are used to describe county-level viral COVID-19 laboratory test (RT-PCR) result totals when information is available on patients' county of residence or healthcare providers' practice location. HHS Protect laboratory data (provided directly to Federal Government from public health labs, hospital labs, and commercial labs) are used otherwise. Some states did not report on certain days, which may affect the total number of tests resulted and positivity rate values. Because the data are deidentified, total viral (RT-PCR) laboratory tests are the number of tests performed, not the number of individuals tested. Viral (RT-PCR) laboratory test positivity rate is the number of positive tests divided by the number of tests performed and resulted. Resulted tests are assigned to a timeframe based on this hierarchy of test-related dates: 1. test date; 2. result date; 3. specimen received date; 4. specimen collection date. Resulted tests are assigned to a county based on a hierarchy of test-related locations: 1. patient residency; 2. provider facility location; 3. ordering facility location; 4. performing organization location. States may calculate test positivity other using other methods. Last week data are from 10/1 to 10/7; previous week data are from 9/24 to 9/30; the week one month before data are from 9/3 to 9/9. HHS Protect data is recent as of 13:41 EDT on 10/11/2020. Testing data are inclusive of everything received and processed by the CELR system as of 19:00 EDT on 10/10/2020.
- Mobility:** Descartes Labs. These data depict the median distance moved across a collection of mobile devices to estimate the level of human mobility within a locality. The 100% represents the baseline mobility level prior to the pandemic; lower percent mobility indicates less population movement. Data is anonymized and provided at the locality level. Data is recent as of 17:33 EDT on 10/11/2020 and is through 10/7/2020.
- Hospitalizations:** Unified hospitalization dataset in HHS Protect. This figure may differ from state data due to differences in hospital lists and reporting between federal and state systems. These data exclude psychiatric, rehabilitation, and religious non-medical hospitals. In addition, hospitals explicitly identified by states/regions as those from which we should not expect reports were excluded from the percent reporting figure. The data presented represents raw data provided; we are working diligently with state liaisons to improve reporting consistency. Data is recent as of 18:19 EDT on 10/11/2020.
- Skilled Nursing Facilities:** National Healthcare Safety Network (NHSN). Data report resident and staff cases independently. Quality checks are performed on data submitted to the NHSN. Data that fail these quality checks or appear inconsistent with surveillance protocols may be excluded from analyses. Data presented in this report are more recent than data publicly posted by CMS. Last week is 9/28-10/4, previous week is 9/21-9/27.
- County and Metro Area Color Categorizations**
 - Red Zone:** Those core-based statistical areas (CBSAs) and counties that during the last week reported both new cases at or above 101 per 100,000 population, and a lab test positivity result at or above 10.1%.
 - Orange Zone:** Those CBSAs and counties that during the last week reported both new cases between 51–100 per 100,000 population, and a lab test positivity result between 8.0–10.0%, or one of those two conditions and one condition qualifying as being in the "Red Zone."
 - Yellow Zone:** Those CBSAs and counties that during the last week reported both new cases between 10–50 per 100,000 population, and a lab test positivity result between 5.0–7.9%, or one of those two conditions and one condition qualifying as being in the "Orange Zone" or "Red Zone."

From: Ben Ezzell
To: Carol Lahman; Jerald Gilbert
Cc: Mayor & Commissioners
Subject: COVID Ordinance
Date: Thursday, July 30, 2020 8:45:44 AM

Good morning all,

I am putting an agenda item on the next regular session agenda (Tuesday, August 4) to consider a COVID precaution mandate again. This time I want the language to be based on the new color coding system from the state.

Here is a link to their thing:

<https://coronavirus.health.ok.gov/covid-19-alert-system>

I want the new ordinance to take the "General Guidelines" sections (all three, Individuals, Businesses, and High-Risk Individuals) from the state and make those recommendations mandatory in the City of Enid. The state's system is color coded: green, yellow, orange, red. Here are the flyers for each of the first three:

Green

https://coronavirus.health.ok.gov/sites/g/files/gmc786/f/oklahomas_new_normal_phase_flyer_english.pdf

Yellow

https://coronavirus.health.ok.gov/sites/g/files/gmc786/f/oklahomas_low_phase_flyer_english.pdf

Orange

https://coronavirus.health.ok.gov/sites/g/files/gmc786/f/oklahomas_moderate_phase_flyer_english.pdf

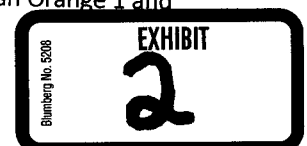
They do not have one posted on their website for Red, but there is legitimate criticism of the Red phase as a standard. The problem with it is that it is basically the same as the Orange, but would come into play when less than 5% of ICU, surgery beds, and ventilators are free statewide, with also less than five days of PPE available statewide. That is a weird standard when the state is also saying that communities are all different and have different circumstances. However let's ignore that specific point for the moment.

As a public health matter, the state's system is really flawed, and Governor Stitt has been called out by the House Select Subcommittee on the Coronavirus for failing to follow the direction of the White House Coronavirus Task Force. It is a pretty blistering letter from Representative Clyburn. Here is a link, I encourage you to read it. I think his criticisms are valid, but as imperfect as the state's classification system is... at least it's something.

<https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/2020-07-29.Clyburn%20to%20WH%20re%20State%20Task%20Force%20Recommendations.pdf>

All I am proposing is that we adopt the recommendations as mandates. I'd like to draft the language such that any change to the state recommendations is applicable, so we aren't adopting their specific suggestions by copy/pasting, but instead by making reference to them. That way if the state crafts better recommendations, we don't have to do anything different, they are just adopted into our mandate. The state updates their color coding map frequently and we can share a link and publicize it everywhere so the public can always know what level we are in.

Enid Public Schools basically something similar, taking the department of ed's recommendations and adopting them. The Department of Ed addressed the weird problem with the "Red" definition by making an Orange 1 and



Orange 2.

<https://sde.ok.gov/sites/default/files/documents/files/Oklahoma%20School%20Safety%20Protocols.pdf>

This isn't a perfect scheme, but it is the best thing I've seen at the state level, so let's go with that.

I don't care if it fails at city commission by the same vote, I don't even care if I am the only commissioner to vote in support of it. This is serious, and we need to act.

To be crystal clear, I am directing Carol to draft an ordinance very simply adopting the state suggesting as a mandate, and put it on the August 4, 2020 regular session agenda for adoption. Any one commissioner can put an item on the agenda, and if this fails again I will keep bringing something back in different iterations.

One additional point, I am completely appalled that our Chief of Police vocally undermined our last effort. I do not give a damn if he wants to enforce it or not, that is the job of EPD, to enforce the ordinances that WE set. Hundreds of other cities and a couple dozen states have figured it out. Saying "it will be difficult" is completely chickenshit. Public health is difficult, and people are dying, so let's do the difficult thing and not whine about it. PEOPLE ARE DYING. Let's get our shit together and not complain about the effort being hard. If EPD won't enforce our ordinances, then who is answerable to who?! We are the elected body, we pass ordinances, and we also control EPD's budget. That was completely out of line.

If you can't get the ordinance drafted in time for the August 4 agenda posting deadline, Carol, then tell me and I'll write the thing myself. I am sure you would do a better job than me, but I acknowledge it's a relatively short fuse. Since all we are doing is taking state recommendations and making them mandates, it shouldn't be TOO complicated.

Thanks,
Ben

Coronavirus Task Force. It is a pretty blistering letter from Representative Clyburn. Here is a link, I encourage you to read it. I think his criticisms are valid, but as imperfect as the state's classification system is... at least it's something.

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Thanks,
Ben



From: JERRY ALLEN
To: codeenforcement@cityofenid.org
Subject: Fwd: COVID Ordinance
Date: Thursday, July 30, 2020 9:41:09 AM

Jerry L. Allen

City of Enid, OK
Enid Ward 1
401 W. Owen K. Garriott Rd
Enid, OK 73701
WWW.ENID.ORG

Begin forwarded message:

From: Ben Ezzell <bezzell@enid.org>
Date: July 30, 2020 at 8:45:45 AM CDT
To: Carol Lahman <clahman@enid.org>, Jerald Gilbert <jgilbert@enid.org>
Cc: Mayor & Commissioners <Mayor-Commissioners@enid.org>
Subject: COVID Ordinance

Good morning all,

I am putting an agenda item on the next regular session agenda (Tuesday, August 4) to consider a COVID precaution mandate again. This time I want the language to be based on the new color coding system from the state.

Here is a link to their thing:

<https://coronavirus.health.ok.gov/covid-19-alert-system>

I want the new ordinance to take the "General Guidelines" sections (all three, Individuals, Businesses, and High-Risk Individuals) from the state and make those recommendations mandatory in the City of Enid. The state's system is color coded: green, yellow, orange, red. Here are the flyers for each of the first three:

Green

https://coronavirus.health.ok.gov/sites/g/files/gmc786/f/oklahomas_new_normal_phase_flyer_english.pdf

Yellow

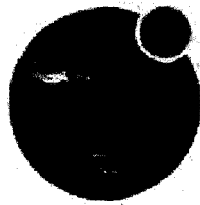
https://coronavirus.health.ok.gov/sites/g/files/gmc786/f/oklahomas_low_phase_flyer_english.pdf

Orange

https://coronavirus.health.ok.gov/sites/g/files/gmc786/f/oklahomas_moderate_phase_flyer_english.pdf

They do not have one posted on their website for Red, but there is legitimate criticism of the Red phase as a standard. The problem with it is that it is basically the same as the Orange, but would come into play when less than 5% of ICU, surgery beds, and ventilators are free statewide, with also less than five days of PPE available statewide. That is a weird standard when the state is also saying that communities are all different and have different circumstances. However let's ignore that specific point for the moment.

As a public health matter, the state's system is really flawed, and Governor Stitt has been called out by the House Select Subcommittee on the Coronavirus for failing to follow the direction of the White House



Brian O'Rourke

Tammy it was totally unenforceable. I told the mayor the same. I would have refused to enforce it. And i would have stood that ground.

2w Like Reply



14

From: [Brian O'Rourke](#)
To: [Police Department](#)
Subject: Fwd: Mayor Signs Emergency Declaration
Date: Friday, March 20, 2020 6:28:17 PM
Attachments: [image007.png](#)
[ATT00001.htm](#)
[ATT00002.htm](#)
[Mayor Signs Emergency Declaration.pdf](#)
[ATT00003.htm](#)
[3.20.2020 Emergency Regulation #2020-1 COVID-19.pdf](#)
[ATT00004.htm](#)

To all,

Here is the press release and proclamation from the Mayor and CM based on municipal code and state statutes. While this does give us authority to enforce the proclamation, we will not at this time But may in the future so please wait. We will see what voluntary compliance does in the coming days and see what problem areas we have.

There are a lot of rumors going around about National Guard and they just seem to be mostly that, rumors. If any of you in the Nat Guard know different let me know.

This extreme measure is probably necessary and certainly unusual. These are strange times for sure. With public safety being an essential service we are out front. I have turned down security requests for hospitals and businesses at this time due to putting people in harms way with the potential for illness. If anyone has questions please let me know.

Chief Brian O'Rourke
Enid Police Department
580 616 7005
580 977 8059 Cell
borourke@enid.org

Begin forwarded message:

From: "Derrick G. Silas, Sr." <dsilas@enid.org>
Date: March 20, 2020 at 4:43:00 PM CDT
To: Jerald Gilbert <jgilbert@enid.org>
Subject: Mayor Signs Emergency Declaration

From: Brian O'Rourke
To: Jerald Gilbert
Subject: Re: COVID update
Date: Monday, July 13, 2020 7:53:19 PM

I would like to minutes of your time tomorrow to discuss this and other issues. If we go masks I want to make my position clear. Enforcement wise.

Chief Brian O'Rourke
Enid Police Department
580 616 7005
580 977 8059 Cell
borourke@enid.org

On Jul 13, 2020, at 5:39 PM, Jerald Gilbert <jgilbert@enid.org> wrote:

FYI,

The hospital administrators or a representative is planning to attend the Wednesday meeting via Zoom. Also Maggie or a County rep will be on the call too. Krista is going to bring her infectious disease control nurse to give input and help answer questions prior to any action you may take.

We'll have a draft declaration for the Commission to modify, add, delete or approve as is and will send it out tomorrow with the meeting agenda.

Maggie updated today that the County was tracking an additional 40 positives from last week that will be working through the system. All the 50 from last week have not shown up yet through the State reporting system. She explained some issues with the processing which included verification and some retesting involved. The County will do a focused appointment based testing all day every Wednesday at this point. They do not yet have the results from the Tuesday mass testing event.

St. Mary's has 4 COVID patients now with one in ICU. Integris has 3 COVID patients with 1 in ICU. Finny advised that OKC has no beds available in ICU for COVID patients and two for surgical/Non-COVID patients.

Xpress tested 536 last week with 39 positive or a 7.2% positive rate.

Masking mandates are the best option to avoid future economic shutdowns per Integris. They would be helpful per the County and St. Mary's.

The Stride Center has had a positive employee as of yesterday and tested all personnel today at Integris but won't have results for 24-48 hours as Integris tries to expedite. So the Stride Center will be closed at least through tomorrow. No events tomorrow. Rotary and an ERDA visioning event were cancelled today.

See you soon.

Jerald R Gilbert
City Manager
City of Enid, OK
580-616-7245 Work
580-484-2473 Cell
jgilbert@enid.org

<image001.jpg>

From: Brian O'Rourke
To: Carol Lahman
Subject: Mandate atty client
Date: Monday, August 3, 2020 7:34:42 PM

Carol,

I do wish you would have offered the alternative. The one presented is a shit show. To let it go is bad. Making more bad feelings. Your fix was good. Why not? Please tell me you are not protecting Ben. Fix this.

Chief Brian O'Rourke
Enid Police Department
580 616 7005
580 977 8059 Cell
borourke@enid.org

From: Brian O'Rourke
To: Jerald Gilbert
Cc: Carol Lahman; Joe Jackson; george.pankonin@icloud.com
Subject: Re: [DO NOT OPEN THIS DOCUMENT IF UNEXPECTED][EXTERNAL_SENDER]COVID-19 Declaration
Date: Sunday, August 30, 2020 8:21:52 PM

To all,

I am not, nor have I ever been, in favor of mask enforcement, as it puts us in a bad position. A 10-dollar fine? Number, one that is lame. If someone will not sign a citation, what's next, an arrest over a 10-dollar citation? That is ludicrous to say the least. Also, what if they sign a citation and don't show up for court? What happens? A 500-dollar FTA warrant on a 10-dollar citation? Again, ridiculous. It also adds to the potential escalation at the scene and possible discrimination complaints on EPD.

I have always said, through two iterations of this, to make the businesses comply and call us if they have a problem. We will trespass non-compliant people by city ordinance, NOT cite for masks. That is a grenade you should not throw at this time. Please make mandatory mask wearing on the businesses to comply if they want to. If a business mandates masks and the customer doesn't like it, they are welcome to shop somewhere else, or the business can call us if they want them removed.

If an arrest is made over a 10-dollar fine, and it is resisted, it can go exponentially higher into state court or larger fines in city court. If the city attorney plans to dismiss any citations then we are totally spinning our wheels and wasting our resources.

I would support business mandates and trespass calls, not "he /she is not wearing a mask" call waste of our time.

Chief Brian O'Rourke
Enid Police Department
580 616 7005
580 977 8059 Cell
borourke@enid.org

On Aug 30, 2020, at 1:04 PM, Jerald Gilbert <jgilbert@enid.org> wrote:

We can work on the enforcement aspect Monday. We all want to be able to support the version that goes on the agenda!

Sent via the Samsung Galaxy S7 edge, an AT&T 4G LTE smartphone

----- Original message -----

From: George Pankonin <george.pankonin@icloud.com>
Date: 8/30/20 11:28 AM (GMT-06:00)
To: Jerry Allen <jallen@enid.org>, "Derwin L. Norwood Jr." <dnorwood@enid.org>, Ben Ezzell <bezzell@enid.org>, Jonathan Waddell

<jwaddell@enid.org>, Rob Stallings <rstallings@enid.org>, David Mason
<dmason@enid.org>, George Pankonin <gpankonin@enid.org>
Cc: Jerald Gilbert <jgilbert@enid.org>, Carol Lahman <clahman@enid.org>
Subject: [DO NOT OPEN THIS DOCUMENT IF UNEXPECTED]
[EXTERNAL_SENDER]COVID-19 Declaration

Please find attached a Declaration for your consideration which will be considered at our meeting on Tuesday. This declaration only addresses a mandate for masks indoors with few exceptions. I realize that this is a huge step for some of you and way to little to late for others, but the fact remains that the effects on our population is worsening while other communities that have enacted measures to require masks has improved. Please do not reply all with your comments. Of course you may email or call me individually if you wish. I'm just going out to cut the grass, but will get back to you later. As always, I appreciate our service to our community!

*****THIS WAS SENT FROM AN EXTERNAL SENDER. PLEASE VERIFY ITS VALIDITY IF YOU ARE UNSURE ABOUT THE NATURE OF THIS EMAIL. *****

<Mask Declaration SEptember .docx>

End Freedom Fighters

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End Freedom Fighters

End Area Political C...

End Community Talk

Wade Burfelson

Founding Members August 31 at 5:33 PM

The End City Commission's special meeting to discuss a mask mandate (again) will be Thursday night, September 3, 2020, at the STRIDE Center (5:30 pm). Commissioners David Mason, Jerry Allen, Rob Stallings are a firm "No." It boils down to Mayor George Pantorin and Commissioner Dervin Norwood, and how they will vote. The other two city commissioners, Ben Ezzell and Jonathan Weddell are "Yes" votes. I have attempted to impress on each commissioner and the mayor that the issue is much bigger than health care. It is statism (the state controlling people) versus capitalism (families, businesses, organizations, schools, etc.) controlling ourselves. Interestingly, in this new proposal, "churches and private schools" set their own rules (which is the way it should be). So if and when I speak out, I'm not speaking out for our church of 3,000 members. We will continue ministry as usual. I am speaking out for End's small businesses, End's families, and other organizations whose behaviors are being mandated and coerced (\$10 fine, then \$100 fine) by these new proposed laws. Let me close by saying, "Speak up. Be nice. Stand firm." These are good men who are attempting to lead us. Even those commissioners who believe that the public is not capable of determining the best course of action for our businesses, our families, and our lives, deserve our respect. We can respect them while we remove them from office for not listening to the very people for whom they work.

Bryan Skaggs Mark, I am indifferent on the mask issue. I was in Stillwater a couple of weeks ago and the Dr's office required a mask....I wore a mask. What concerns me is his agenda with the police department. Opening the charter and wanting the police department answering to the city commission, an extra civilian oversight committee to review policy and procedure as well as all complaints and use of force. Who would they answer to? If you look across the nation you can see the results of city commissions running a police department. It puts politics into the operation of the police department. I'm tired of staying silent about this commissioners agenda and his disrespect of others when he doesn't get his way.

Like · Reply · 1h



From: Bryan Skaggs
To: wwwburleson@gmail.com
Subject: FW: Mr. Ezzell
Date: Thursday, July 30, 2020 1:12:41 PM

I just received this email and thought you might like to read. Ben has a personal agenda that he will try and enact over the next 8 months. The last section of this email outlines his agenda. Ben would like to open the charter and have the police department answer to the city council. Obviously I do not think this a good idea since this is not working all over the country. When the police department answers directly to the city council it brings politics into policing. He also wants to have an extra civilian oversight committee to review all police uses of force and complaints/investigations. The way he would like the committee to function is to answer to the city commission. The Police Civil Service Commission is that body right now and deters politics and agendas of certain city councilmen to influence the police department operations.

The above is strictly my opinion and not a statement by the EPD.

Regards,
Bryan

From: Warren Wilson
Sent: Thursday, July 30, 2020 12:53 PM
To: EPD Captains <EPDCapt@enid.org>; Brian ORourke <borourke@enid.org>
Subject: Mr. Ezzell

This was posted on FB by Kristin DaSilva of Red Rock Firearms. She copy/pasted it from a friend's social media post. It reportedly contains a quote made by Ben Ezzell from an email. I looked at Mr. Ezzell's personal page and he has a similar but much less inflammatory post on there. I have some concerns about this and thought the upper administration should know.

Just a heads up for every interested. Ward 3 Commissioner Ben Ezzell has stated he intends to continually bring up this mask ordinance mandate until he gets his way.

Attached below is the email he has sent in its entirety Please read to the end including what he has to say about Enid's police chief.

Good morning all,

I am putting an agenda item on the next regular session agenda (Tuesday, August 4) to consider a COVID precaution mandate again. This time I want the language to be based on the new color coding system from the state.

Here is a link to their thing:

<https://coronavirus.health.ok.gov/covid-19-alert-system>

I want the new ordinance to take the "General Guidelines" sections (all three, Individuals, Businesses, and High-Risk Individuals) from the state and make those recommendations mandatory in the City of Enid. The state's system is color coded: green, yellow, orange, red. Here are the flyers for each of the first three:

Green

https://coronavirus.health.ok.gov/.../oklahomas_new_normal_ph...



Yellow

https://coronavirus.health.ok.gov/.../oklahomas_low_phase_fly...

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They do not have one posted on their website for Red, but there is legitimate criticism of the Red phase as a standard. The problem with it is that it is basically the same as the Orange, but would come into play when less than 5% of ICU, surgery beds, and ventilators are free statewide, with also less than five days of PPE available statewide. That is a weird standard when the state is also saying that communities are all different and have different circumstances. However let's ignore that specific point for the moment.

As a public health matter, the state's system is really flawed, and Governor Stitt has been called out by the House Select Subcommittee on the Coronavirus for failing to follow the direction of the White House Coronavirus Task Force. It is a pretty blistering letter from Representative Clyburn. Here is a link, I encourage you to read it. I think his criticisms are valid, but as imperfect as the state's classification system is... at least it's something.

<https://coronavirus.house.gov/.../2020-07-29.Clyburn%20to%20W...>

All I am proposing is that we adopt the recommendations as mandates. I'd like to draft the language such that any change to the state recommendations is applicable, so we aren't adopting their specific suggestions by copy/pasting, but instead by making reference to them. That way if the state crafts better recommendations, we don't have to do anything different, they are just adopted into our mandate. The state updates their color coding map frequently and we can share a link and publicize it everywhere so the public can always know what level we are in.

Enid Public Schools basically something similar, taking the department of ed's recommendations and adopting them. The Department of Ed addressed the weird problem with the "Red" definition by making an Orange 1 and Orange 2.

<https://sde.ok.gov/.../Oklahoma%20School%20Safety%20Protocols...>

This isn't a perfect scheme, but it is the best thing I've seen at the state level, so let's go with that.

I don't care if it fails at city commission by the same vote, I don't even care if I am the only commissioner to vote in support of it. This is serious, and we need to act.

To be crystal clear, I am directing Carol to draft an ordinance very simply adopting the state suggesting as a mandate, and put it on the August 4, 2020 regular session agenda for adoption. Any one commissioner can put an item on the agenda, and if this fails again I will keep bringing something back in different iterations.

One additional point, I am completely appalled that our Chief of Police vocally undermined our last effort. I do not give a damn if he wants to enforce it or not, that is the job of EPD, to enforce the ordinances that WE set. Hundreds of other cities and a couple dozen states have figured it out. Saying "it will be difficult" is completely chickenshit. Public health is difficult, and people are dying, so let's do the difficult thing and not whine about it. PEOPLE ARE DYING. Let's get our shit together and not complain about the effort being hard. If EPD won't enforce our ordinances, then who is answerable to who?! We are the elected body, we pass ordinances, and we also control EPD's budget. That was completely out of line.

If you can't get the ordinance drafted in time for the August 4 agenda posting deadline, Carol, then tell me and I'll write the thing myself. I am sure you would do a better job than me, but I acknowledge it's a relatively short fuse. Since all we are doing is taking state recommendations and making them mandates, it shouldn't be TOO complicated.

Thanks,
Ben

From: Wade Burleson
To: Bryan Skaggs
Subject: [EXTERNAL_SENDER]RE: Mr. Ezzell
Date: Thursday, July 30, 2020 1:17:54 PM

Ugh.

Mr. Ezzell needs off the city council.

Thank, Bryan.

Wade

P.S. We are in Florida until August 9 (vacation). Unfortunately, I can't be at the City Council meeting.

Sent from Mail for Windows 10

From: Bryan Skaggs
Sent: Thursday, July 30, 2020 1:12 PM
To: wwburleson@gmail.com
Subject: FW: Mr. Ezzell

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*Thanks,
Ben*

*****THIS WAS SENT FROM AN EXTERNAL SENDER. PLEASE VERIFY ITS VALIDITY IF YOU ARE UNSURE ABOUT THE NATURE OF THIS EMAIL. *****



WADE BURLESON
Lead Pastor

The Honorable Judge Allison M. Lafferty
Associate Judge, District Court
Blaine County
212 N. Weigel Avenue
Watonga, Oklahoma 73772-1286

Dear Judge Lafferty,

Judge Paul Woodward told me that you have been assigned "The Petition to Recall Ward Three City Commissioner Ben Ezzell, Submitted to the City of Enid on August 4, 2020," and will hear the case on Tuesday, October 6, 2020, in Enid, Oklahoma.

Enid City Clerk Alissa Lack certified the signatures on the recall petition on August 9, 2020. Enid's city charter states a recall election must be held within 60 days of the certification of the recall (October 8, 2020). As you know, the Oklahoma Supreme Court has mandated that local recall petitions must fall under the authority of the State Election Board, *thus superseding the City Charter*.

Due to delay tactics by Commissioner Ben Ezzell, including filing an Objection and Protest to Recall Petition with the Garfield County District Court on August 17, 2020, Enid's City Attorney missed the state deadline for filing the recall for the statewide November 3, 2020, election. Ben Ezzell seems to be using the courts to avoid being recalled. If he's successful delaying your ruling until November, then the filing deadline for the February 2021 statewide election will be missed too.

I am writing to urge you, Judge Lafferty, to uphold the rule of law and issue *an immediate ruling* so Enid City Attorney Carol Lehman can file with the State of Oklahoma a request for recall of Ben Ezzell on the February 2021 statewide ballot.

Enid City Attorney Carol Lehman represents the citizens of Enid. Carol is in a seemingly "*conflict of interest*" position, since she has publicly credited Ben Ezzell and his mother, Cheri Ezzell (a former Enid City Commissioner) for Carol getting her job as Enid's city attorney. I've spoken to Carol and informed her that the citizens of Enid will be watching closely to ensure Carol represents the citizens of Enid to the best of her ability.

Thank you, Judge Lafferty, for your service to Oklahoma. I'm confident that you will follow the rule of law and issue an immediate judgment that the recall petition meets Oklahoma state requirements, therefore allowing the citizens of Enid redress for their petition to recall.

Sincerely,

Wade Burleson
Enid, Oklahoma



From: Ben Ezzell
To: Mayor & Commissioners; Jerald Gilbert; Carol Lahman
Cc: Bryan Skaugs; Brian Oourke
Subject: The draft declaration
Date: Saturday, August 1, 2020 7:11:15 AM

Good morning all,

Here is a link to the draft declaration that will be considered at the August 4th City Council meeting. Carol and I worked together to try and come up with a minimally invasive way to emphasize the importance of taking this public health crisis seriously. We have drafted it to adopt a different set of rules for each color coded risk level as determined by the Oklahoma State Department Health (OSDH). All of them do require social distancing. Wearing a mask is part of that requirement, but it only applies when other social distancing requirements are difficult to maintain, with lots of flexibility built in.

<https://enid.civicweb.net/document/14708/Consider%20the%20City%20of%20Enid%20Emergency%20Declaration.pdf?handle=F3442019796C43AC9D2A5D0B6FE308F5>

In deference to the concerns expressed by the Enid Police Department, I drafted the Enforcement provision limiting EPD (and code officers) to being responsible only for social distancing enforcement and safeguards related to large gatherings. I don't want to put Officers in an impossible situation, being responsible for policing everything on the State's list of precautionary measures.

The declaration even goes so far to say "All other provisions of this declaration rely on residents of Enid to act in each other's mutual interest and comply under the honor system." Everyone that came to the meeting earlier this month insisted that they could act responsibly without the City enforcing the rules, so I am taking them at their word. Just do the right thing and protect each other.

For those instances where a face covering violation is being enforced, the officer has to first offer a mask or in the alternative suggest that the person leave the indoor place. No citation will be issued if the person complies with either choice. The penalties for the first and second offenses are minimal, a \$9 fine. Only after a third or subsequent offense do the fines increase, but they are not to exceed \$100.

I am not just bringing back the same thing we already looked at. I have tried to find a way to get people in Enid to change their behavior, take this deadly disease more seriously, and implement the measures that all our local public health experts tell us will improve outcomes in our community. I listened to the hours of debate and dozens of emails insisting that people can be responsible on their own, that it's too hard for EPD to enforce complicated new things, that the City shouldn't act with a heavy hand. I've worked hard to put together something that I hope will be seen as a minimally invasive way to make our community safer.

I have even been emailing back and forth with Wade Burleson, trying to convince him to see the light. I really am trying to do the right thing here, because doing nothing is simply not enough and I don't want people dying in Enid. I sure wish my public flogging could have waited to start until after this was ready to circulate. I guess thanks for the exposure..?

Call my cocky, just some arrogant bantam strutting around, crossing the road back and forth for some unknown reason... but are you really surprised that I wasn't letting this one go? I mean come on, does a chicken shit in the woods?

Have a good Saturday.

-Ben





AGENDA ITEM REPORT

Meeting Date: August 04, 2020

Staff Contact: Ben Ezzell, Ward 3 City Commissioner

Department: Administration

Subject: Consider the City of Enid Emergency Declaration COVID-19 August 4, 2020 Pursuant to Enid Municipal Code 2014, Title 5, Chapter 3, Sections 5-3-1 through 5-3-10 and 63 O.S. 683.11.

Background:

This item, if approved, will adopt the State of Oklahoma's color-coded COVID-19 alert system and provide specific measures tailored to the risk level for individuals, businesses, and vulnerable persons. As of July 31, 2020, Garfield County was at Orange Moderate Risk on the Oklahoma Color-Coded Alert System.

Attachments:

8-4-2020 Emergency Declaration COVID-19

**CITY OF ENID, OKLAHOMA
DECLARATION
COVID-19 August 4, 2020
PURSUANT TO ENID MUNICIPAL CODE 2014, TITLE 5, CHAPTER 3,
SECTIONS 5-3-1 THROUGH 5-3-10 AND 63 O.S. 683.11.**

WHEREAS, the World Health Organization (WHO) has declared COVID-19 (Coronavirus) to be a global pandemic; the President of the United States has declared an infectious disease national emergency declaration to combat COVID-19 on March 13, 2020; The State of Oklahoma declared a state of emergency on March 15, 2020; and the City of Enid declared a state of emergency on March 16, 2020;

WHEREAS, these State of Emergencies are still in effect;

WHEREAS, the spread of COVID-19 is a disaster affecting life, health, and safety of residents and visitors;

WHEREAS, the number of cases has increased in Oklahoma and surrounding states and the State of Oklahoma has put into place a four-tiered COVID-19 Alert System that uses color to identify the current risk level and the appropriate color-coded measures to take:

WHEREAS, the provisions of Enid Municipal Code 2014, Title 5, Public Safety, Chapter 3, Emergency Management, Sections 5-3-1 through 5-3-10, and 63 O.S. §683.11 permit the City Manager, to promulgate emergency regulations during a state of emergency within the City of the Enid.

NOW THEREFORE, BE IT DETERMINED THAT THE FOLLOWING DECLARATION SHALL AUGMENT THOSE PROMULGATED BY THE STATE OF OKLAHOMA AND WILL GO INTO EFFECT ON: Friday, August 7, 2020 at 5:00 p.m.

Section I. A state of emergency continues to exist within the corporate limits of the City of Enid, Garfield County, Oklahoma.

Section II. This declaration grants the full range of emergency powers to the City to promulgate regulations and directives consistent with Enid Municipal Code, 2014, state and federal laws and regulations, and the Center for Disease Control and Prevention's (CDC) infectious disease protocols to help minimize the transmission to Enid residents.

Section III. Definitions.

- A. "Local Health Officials" means the administrators of St. Mary's, Integris Bass, and Garfield County Health Department.
- B. "Social Distancing Requirements" refers to the maintenance at least a 6-foot minimum distance from other individuals, washing hands with soap and water for at least 20

seconds as frequently as possible or using hand sanitizer, regularly cleaning high-touch surfaces, and not shaking hands. The use of simple cloth face coverings in public settings where other social distancing measures are difficult to maintain. Stay home when sick.

- C. "Substantial Community Spread" when used by the CDC refers to large scale community transmission, where health care staffing is significantly impacted and where there are multiple cases within communal settings.
- D. "Vulnerable Persons" are persons over the age of sixty-five or people of any age who have serious underlying medical conditions.
- E. "Red Risk Factors" refers to the four thresholds identified in the Oklahoma COVID-19 Color-coded, four-tiered, risk plan. The four thresholds are: the percent of ICU beds available statewide is less than 5%; the percent of medical surgery beds available state-wide is less than 5%; the percent of ventilators available state-wide is less than 5%; and the average days of personal protective equipment on hand at facilities across the state is less than 5 days. If one or more of these thresholds occurs in the State, within a given week in which, there are more than 14.39 new cases per 100,000 in a particular County, the phase is Red, High Risk.

Section IV. The color-coded four-tiered COVID-19 Alert System in its current form, and as amended by the State of Oklahoma, is adopted by the City of Enid.

Section V. The Oklahoma color-coded four-tiered COVID-19 Alert System begins with Green "The New Normal" when there are less than 1.43 daily new cases per 1000,000 population; Yellow "Low Risk" when the new daily cases per 100,000 population are between 1.43 and 14.39; Orange "Moderate Risk" when there are more than 14.39 daily new cases per 100,000 population; and Red "High Risk" when there are more than 14.39 daily new cases and one of the four additional red factors are present.

Section VI. New Normal Green Risk Phase:

Individuals shall:

- 1) Engage in social distancing as defined in Section III(B).
- 2) Practice symptom checks prior to team sport competitions or practices.
- 3) Don't attend large or public gatherings and venues unless the event includes these safeguards: increased hygiene measures, physical distancing, face coverings, and symptom checks.

Businesses shall:

- 1) Dine-in services operate with elevated cleaning and hygiene measures as outlined by the CDC.
- 2) Physical distancing and hygiene measures are utilized in workplaces.
- 3) Utilize face coverings where physical distancing is not feasible.

Vulnerable persons shall:

- 1) Wear face coverings when physical distancing measures are not maintained.
- 2) When traveling use appropriate precautions and avoid high risk areas.
- 3) Wear a face covering and stay six feet away when visiting friends and family.
- 4) Limit physical interactions with other vulnerable people except those in your household.
- 5) Do not visit others in hospitals, nursing homes, or residential care facilities.

Section VII. Low Risk Yellow Phase:

Individuals shall:

- 1) Engage in social distancing as defined in Section III (B).
- 2) Practice symptom checks prior to team sport competitions or practices.
- 3) Not attend large or public gatherings and venues unless the event includes these safeguards: increased hygiene measures, physical distancing, face coverings, and symptom checks.
- 4) When attending meetings or gatherings choose the less crowded time or locations that are offered or attend by on-line streaming.

Businesses shall:

- 1) Dine-in services operate with elevated cleaning and hygiene measures as outlined by the CDC.
- 2) When possible, implement flexible work arrangements to further enhance physical distancing and hygiene measures in workplaces.
- 3) Utilize face coverings where physical distancing is not feasible.

Vulnerable persons shall:

- 1) Wear face coverings when physical distancing measures are not maintained.
- 2) When traveling use appropriate precautions and avoid high risk areas.
- 3) Wear a face covering and stay six feet away when visiting friends and family.
- 4) Limit physical interactions with other vulnerable people except those in your household.
- 5) Do not visit others in hospitals, nursing homes, or residential care facilities unless urgent.
- 6) Do not interact with symptomatic individuals in person or engage in close contact.
- 7) Limit social interactions to groups of less than 50 or fewer people.

Section VIII. Moderate Risk Orange Phase.

Individuals shall:

- 1) Engage in social distancing as defined in Section III (B).
- 2) Practice symptom checks prior to team sport competitions or practices.

- 3) Not attend large or public gatherings and venues unless the event includes these safeguards increased hygiene measures, physical distancing, face coverings, and symptom checks.
- 4) When possible, attend meetings or gatherings where over 50 people may be present by on-line streaming.

Businesses shall:

- 1) Dine-in services operate with elevated cleaning and hygiene measures as outlined by the CDC.
- 2) Continue flexible work arrangements to further enhance physical distancing and hygiene measures in workplaces and where possible implement telework options.
- 3) In high-contact situations must implement strict public health protocols in consultation with local public health officials to remain open.

Vulnerable persons shall:

- 1) Wear face coverings at all times in public.
- 2) Limit travel to work, if telework is not possible and for essential services.
- 3) Restrict visits to friends or family to emergencies and family.
- 4) Limit physical interactions with other vulnerable people except those in your household.
- 5) Not visit hospitals, nursing homes, or residential care facilities.
- 6) Not interact with symptomatic individuals in person or engage in close contact.
- 7) Not attend social gatherings outside your home.

Section IX. When one or more of the red risk factors occurs in the State, within a given week in which, there are more than 14.39 new cases per 100,000 in a particular County, the City of Enid shall seek assistance from the State of Oklahoma in implementing a remediation plan with additional remediation measures specifically tailored to the specific situation in the field. The Moderate Risk Orange Phase measures remain in force and effect unless specifically rescinded or superseded.

Section X. Enforcement.

The following provisions of this declaration may be enforced by any legally authorized code-enforcement inspectors or sworn police officers of the City of Enid:

All provisions relating to social distancing, as defined in Section III (B).

All provisions relating to safeguards at large or public gatherings and venues.

All other provisions of this declaration rely on residents of Enid to act in each other's mutual interest and comply under the honor system.

Section XI. Violation and Penalties.

- A. Face covering violations - Inspectors and officers, at the initial contact, shall offer a face covering or the option of leaving the indoor place to a person who is not excepted from the face covering requirement. No citation shall issue to a person who complies with one of the options. Failure to wear the face covering or failure to leave the indoor place shall constitute a violation of this declaration.
- B. Social distancing and large or public gathering violations – Inspectors and officers, at the initial contact, shall inform the person or (where applicable) event organizers of the declaration requirements. No citation shall issue to a person who takes appropriate steps to remediate the violation. Continued willful refusal to comply shall constitute a violation of this declaration.
- C. A violation of this article shall constitute an offense. Each violation of this Section shall constitute a separate offense. Upon conviction, the penalty shall not exceed for the first and second offenses, a \$9 fine. A third or subsequent violation shall require a mandatory appearance in the Municipal Court and, upon conviction, shall be punishable with a penalty not exceeding \$100 inclusive of costs and State-mandated fees.

Section XII. Defense to Violation.

It shall be a defense to any violation of Section XI (a) of this declaration if a person produces a document demonstrating that a treating physician has verified that wearing a face covering could cause impairment or would constitute a hazard to the individual.

Section XIII. This declaration shall expire at 11:59 p.m. on December 31, 2020, unless and until it is extended, rescinded, superseded, or amended in writing.

This Declaration was approved by the Mayor and Board of Commissioners on Tuesday, August 4, 2020.

(SEAL)

George C. Pankonin, Mayor

ATTEST:

Alissa Lack, City Clerk

Approved as to Form and Legality:

Carol Lahman, City Attorney

From: Brian O'Rourke
To: Ben Ezzell
Cc: Carol Lahman; Jerald Gilbert
Subject: RE: COVID Ordinance
Date: Thursday, July 30, 2020 4:43:10 PM

Ben,

First off, I have been called worse so CS I am good with. I fully understand you are, and were, upset at my comment which was "difficult to enforce" turning that into a "refusal to enforce" is poor form also on your part. I took an oath of office and a refusal to enforce Federal, State and municipal ordinances would violate that oath and I have not violated that oath in almost 40 years. I also did not want to put the officers in a position to enforce that as it would be very unpopular in a very unpopular atmosphere at this time. I had suggested to the Mayor that it would be better to get the business to buy in as they now have, (which is good) instead of a enforced mandate with a fine that would probably never be actually levied by the court. I wear a mask going into stores that request it, I follow the rules. I would suggest compliance through the businesses it seems to work better for the public and still get compliance.

FYI I have also answered Carol's email with the use of force incident and your person's description of the incident differs greatly from the actual events. She was not harmed in any way. Nor was any force used on her. Reforms take time and there can't be a knee jerk reaction at first only to recalibrate later. We are working with Lexipol thru OMAG to change the use of force policy and any others that need to be. They assist in writing policies for police nationwide and we will do it right.

Brian

From: Ben Ezzell
Sent: Thursday, July 30, 2020 3:08 PM
To: Brian O'Rourke <borourke@enid.org>; Bryan Skaggs <bskaggs@enid.org>
Subject: FW: COVID Ordinance

Poor form guys. I sent an email to the commission, city attorney, and city manager. Awfully tacky to post it on Facebook, Skaggs.

I haven't said a single public word criticizing you, O'Rourke, for comments that I do believe were out of line. We can't have our Chief of Police telling the governing body that he won't enforce laws. That is simply inappropriate.

I have lost some respect for you both.

-Ben

From: Ben Ezzell <bezzell@enid.org>
Date: Thursday, July 30, 2020 at 3:05 PM
To: Carol Lahman <clahman@enid.org>, Jerald Gilbert <jgilbert@enid.org>
Cc: Mayor & Commissioners <Mayor-Commissioners@enid.org>
Subject: Re: COVID Ordinance

I sent an email to the eight of you to give you a heads up, a courtesy that I was under no obligation to do. Although all our emails are subject to open records request, I try to talk to you all as peers. Well, one of you forwarded this email to someone, who sent it to Bryan Skaggs, who posted it in its entirety on Facebook.



Am I pissed at O'Rourke? Well of course. Would I blast him in public? Probably not. Nor was that part of any email I have sent to anyone else in the community.

I think it was poor form to immediately pass it on to EPD. Airing our dirty laundry in public is tacky at best. I am disappointed.

Though I stand by the sentiment. Elected body is responsible for passing ordinances, and law enforcement is responsible for enforcing them. Our whole system is designed that way for a reason.

Thanks,
Ben

From: Ben Ezzell <bezzell@enid.org>
Date: Thursday, July 30, 2020 at 8:45 AM
To: Carol Lahman <clahman@enid.org>, Jerald Gilbert <jgilbert@enid.org>
Cc: Mayor & Commissioners <Mayor-Commissioners@enid.org>
Subject: COVID Ordinance

Good morning all,

I am putting an agenda item on the next regular session agenda (Tuesday, August 4) to consider a COVID precaution mandate again. This time I want the language to be based on the new color coding system from the state.

Here is a link to their thing:

<https://coronavirus.health.ok.gov/covid-19-alert-system>

I want the new ordinance to take the "General Guidelines" sections (all three, Individuals, Businesses, and High-Risk Individuals) from the state and make those recommendations mandatory in the City of Enid. The state's system is color coded: green, yellow, orange, red. Here are the flyers for each of the first three:

Green

https://coronavirus.health.ok.gov/sites/g/files/gmc786/f/oklahomas_new_normal_phase_flyer_english.pdf

Yellow

https://coronavirus.health.ok.gov/sites/g/files/gmc786/f/oklahomas_low_phase_flyer_english.pdf

Orange

https://coronavirus.health.ok.gov/sites/g/files/gmc786/f/oklahomas_moderate_phase_flyer_english.pdf

They do not have one posted on their website for Red, but there is legitimate criticism of the Red phase as a standard. The problem with it is that it is basically the same as the Orange, but would come into play when less than 5% of ICU, surgery beds, and ventilators are free statewide, with also less than five days of PPE available statewide. That is a weird standard when the state is also saying that communities are all different and have different circumstances. However let's ignore that specific point for the moment.

As a public health matter, the state's system is really flawed, and Governor Stitt has been called out by the House Select Subcommittee on the Coronavirus for failing to follow the direction of the White House Coronavirus Task Force. It is a pretty blistering letter from Representative Clyburn. Here is a link, I encourage you to read it. I think

his criticisms are valid, but as imperfect as the state's classification system is... at least it's something.

<https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/2020-07-29.Clyburn%20to%20WH%20re%20State%20Task%20Force%20Recommendations.pdf>

All I am proposing is that we adopt the recommendations as mandates. I'd like to draft the language such that any change to the state recommendations is applicable, so we aren't adopting their specific suggestions by copy/pasting, but instead by making reference to them. That way if the state crafts better recommendations, we don't have to do anything different, they are just adopted into our mandate. The state updates their color coding map frequently and we can share a link and publicize it everywhere so the public can always know what level we are in.

Enid Public Schools basically something similar, taking the department of ed's recommendations and adopting them. The Department of Ed addressed the weird problem with the "Red" definition by making an Orange 1 and Orange 2.

<https://sde.ok.gov/sites/default/files/documents/files/Oklahoma%20School%20Safety%20Protocols.pdf>

This isn't a perfect scheme, but it is the best thing I've seen at the state level, so let's go with that.

I don't care if it fails at city commission by the same vote, I don't even care if I am the only commissioner to vote in support of it. This is serious, and we need to act.

To be crystal clear, I am directing Carol to draft an ordinance very simply adopting the state suggesting as a mandate, and put it on the August 4, 2020 regular session agenda for adoption. Any one commissioner can put an item on the agenda, and if this fails again I will keep bringing something back in different iterations.

One additional point, I am completely appalled that our Chief of Police vocally undermined our last effort. I do not give a damn if he wants to enforce it or not, that is the job of EPD, to enforce the ordinances that WE set. Hundreds of other cities and a couple dozen states have figured it out. Saying "it will be difficult" is completely chickenshit. Public health is difficult, and people are dying, so let's do the difficult thing and not whine about it. PEOPLE ARE DYING. Let's get our shit together and not complain about the effort being hard. If EPD won't enforce our ordinances, then who is answerable to who?! We are the elected body, we pass ordinances, and we also control EPD's budget. That was completely out of line.

If you can't get the ordinance drafted in time for the August 4 agenda posting deadline, Carol, then tell me and I'll write the thing myself. I am sure you would do a better job than me, but I acknowledge it's a relatively short fuse. Since all we are doing is taking state recommendations and making them mandates, it shouldn't be TOO complicated.

Thanks,
Ben