

Legal Department

DATE: 4/30/2020

MEMO:

TO: Mayor Julie Moore Wolfe and Members of the City Council

FROM: Scot Wrighton, City Manager
Wendy Morthland, City Attorney

SUBJECT: Ordinance Amending City Code Chapter 73-Offenses Regarding Mandatory Face Coverings to Preserve and Protect Residents

SUMMARY RECOMMENDATION: In accordance with the Governor's April 30 face mask order, and the general desire of the State of Illinois and the city of Decatur to reduce the transmission of the COVID-19 virus, it is recommended that the City Council adopt an ordinance making it a legal requirement that face masks be worn in certain circumstances.

BACKGROUND:

The State of Illinois, health departments and many health professionals have recommended the use of face coverings at different times since the start of the pandemic. Now the Governor's newest order has made this recommendation mandatory--in certain circumstances.

The State continues to rely on local law enforcement to implement their directives, which, by its nature, allows reasonable discretion as to how the Statewide orders are enacted, implemented and enforced in each jurisdiction. There have also been legal challenges made to the extent of the Governor's legal powers in an emergency. None of this alters the ability of the Decatur City Council to enact the proposed ordinance (or one similar to it, if amended by the council) in the interests of public health and safety.

If adopted, violation of the ordinance is a minor violation, and police will have broad discretion as to when and where to write citations. The goal of the city is to have people wear masks where required and thereby protect others from virus, not to generate tickets or revenue.

PRIOR COUNCIL ACTION: None. This topic was not specifically addressed by previous emergency actions.

POTENTIAL OBJECTIONS: Persons opposed to wearing masks will likely object.

ATTACHMENTS:

Description	Type
Ordinance Amending City Code Chapter 73-Offenses Regarding Mandatory Face Coverings to Preserve and Protect Residents	Ordinance

ORDINANCE NO. _____

**ORDINANCE AMENDING CITY CODE
-CHAPTER 73-
OFFENSES
REGARDING MANDATORY FACE COVERINGS
TO PRESERVE AND PROTECT RESIDENTS**

WHEREAS, the City of Decatur, Illinois, Macon County, Illinois (“City”), is a home rule unit of government and, pursuant to the provisions of Article VII, Section 6(a) of the Illinois Constitution, may exercise any power and perform any function pertaining to its government and affairs; and,

WHEREAS, the Illinois Municipal Code, 65 ILCS 5/11-20-5, provides that municipalities may do all acts and make all regulations which may be necessary or expedient for the promotion of health or the suppression of diseases; and,

WHEREAS, the City has determined that the outbreak of novel coronavirus (“COVID-19”), a highly contagious disease, jeopardizes the public health and safety of the residents of the City; and,

WHEREAS, the United States Centers for Disease Control and Prevention (“CDC”) and the Illinois Department of Public Health (“IDPH”) have identified the risks associated with the outbreak of COVID-19 and made recommendations for suppression of the disease that include all individuals wear face coverings in public settings where other social distancing measures may be difficult to maintain because persons who are asymptomatic can spread COVID-19; and,

WHEREAS, in order to protect the health, safety and welfare of the persons within the City, the City has determined that suppression of disease will be enhanced by implementing the following health restrictions.

BE IT THEREFORE ORDAINED, BY THE CITY COUNCIL OF THE CITY OF DECATUR, ILLINOIS:

Section 1. That the foregoing recitals shall be and are hereby incorporated as findings of fact as if said recitals were fully set forth herein.

Section 2. That Chapter 73 of the City Code of the City of Decatur, Illinois, be, and the same is hereby modified and amended by amending language to Section 38, reflecting the amendment. Said Section 38 as so modified and amended, shall provide as follows:

38. PROTECTIVE FACE COVERINGS REQUIRED.

A. Required. All persons within the municipal boundary of the City of Decatur engaging in any activity outside of their residence, while other persons are present, shall wear protective face coverings, which face coverings shall cover their mouth and nose, when they must leave their home or report to work including but not limited to:

- (1) Shopping or working at retail businesses;
- (2) Picking up food from a drive through restaurant or food establishment or curbside pickup from a restaurant or food establishment;
- (3) Visiting a health care provider;
- (4) Traveling on public transportation, taxis or rideshares;
- (5) Interacting with customers, clients, patients or coworkers at a place of business or worship that is open to the general public;
- (6) Performing services for state and local government agencies, where close interactions with other people are unavoidable;
- (7) When feeling sick, coughing or sneezing or otherwise ill.

B. Exceptions. Protective face coverings shall not be required,

- (1) For children under two years of age, or for those with medical issues that would be compromised by wearing a face covering;
- (2) When engaged in physical activity such as walking or running while maintaining social distancing from others of not less than six feet;
- (3) When alone or with members of the same household;
- (4) When eating or drinking, whether in public or private.

C. Duration. The restrictions herein shall be effective until repealed by the City Council.

D. Admission or Service Refusal. A business or property owner or operator may refuse admission or service to any individual who fails to wear a face covering reasonably designed and made to inhibit, filter or restrict the passing of a person's breath, sneeze, cough or other exhaling from one's nose and mouth.

Section 3. That Chapter 73 of the City Code of the City of Decatur, Illinois, be, and the same is hereby modified and amended by amending Sections 38 and 39, so that Section 38 and 39 as so modified and amended, shall provide as follows:

39. PENALTY. Any person, firm or corporation who shall violate any of the provisions of this Chapter shall, upon conviction, be fined a minimum of Two Hundred Fifty Dollars (\$250.00) but not more than Five Hundred Dollars (\$500.00) for each offense, and each day on which a violation occurs or continues shall be considered a separate offense.

40. OTHER REMEDIES. The fine provided for in Section 39 of this Chapter shall not be deemed to be the exclusive remedy for any act or thing constituting a nuisance under the

provisions hereof, or under the common law, or to bar or prohibit the exercise of remedies, other than fine, applicable thereto.

Section 4. Nothing contained in this Ordinance shall be construed to impair the powers contained in this Code, giving powers to the police and fire departments, but shall be construed together with existing ordinances now in effect for the safety and welfare of the citizens of Decatur.

Section 5. Due to the urgent need to protect the public health, safety and welfare due to COVID-19, this Ordinance shall be in full force and effect immediately upon passage.

Section 6. All ordinances and resolutions, or parts thereof, in conflict with the provisions of this Ordinance are, to the extent of the conflict, expressly repealed on the effective date of this Ordinance.

Section 7. If any provision of this Ordinance or application thereof to any person or circumstances is ruled unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid application or provision, and each invalid provision or invalid application of this ordinance is severable.

Section 8. That the City Clerk be, and she is hereby, authorized and directed to cause the provisions hereof to be appropriately set out in the City Code and to cause the same to be published in pamphlet form according to law.

PRESENTED, PASSED, APPROVED, AND RECORDED this 4th day of May, 2020.

JULIE MOORE WOLFE, MAYOR

ATTEST:

CITY CLERK

PUBLISHED this _____ day of _____, 2020.

CITY CLERK

ADDITIONS AND DELETIONS
CHAPTER 73
- OFFENSES-

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