

ORDINANCE NO. 2692

AN ORDINANCE AMENDING CHAPTER 54, HEALTH AND PUBLIC WELFARE, OF THE MCALESTER CITY CODE, TO CREATE ARTICLE IV, COVID-19 PANDEMIC FACE COVERINGS; CREATING AND ESTABLISHING FINES FOR CHAPTER 54, HEALTH AND PUBLIC WELFARE, ARTICLE IV, COVID-19 PANDEMIC FACE COVERINGS, SECTION 54-52, FACE COVERINGS MANDATED IN PUBLIC PLACES; REPEALING ALL CONFLICTING ORDINANCES, PROVIDING FOR SEVERABILITY, AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF MCALESTER, OKLAHOMA, that

SECTION 1. That Chapter 54, Health and Public Welfare, Article IV, Covid-19 Pandemic Face Coverings, of the McAlester City Code, is hereby created to read as follows:

Sec. 54-52. Findings of Fact

WHEREAS, on March 11, 2020, the World Health Organization (WHO) declared COVID-19 (Coronavirus) to be a pandemic; and

WHEREAS, on March 13, 2020, the President of the United States declared a National Emergency; due to the COVID-19 Virus pandemic; and

WHEREAS, on March 15, 2020, the Governor of the State of Oklahoma has declared an emergency caused by the impending threat of COVID-19 to the people of this State and the public's peace, health and safety; and

WHEREAS, on March 16, 2020, the Pittsburg County Commissioners declared an emergency from the potential effects of COVID-19; and

WHEREAS, on March 17, 2020, the Mayor of McAlester proclaimed a state of emergency in the city limits of McAlester; and

WHEREAS, according to the Center for Disease Control and Prevention ("CDC"), the COVID-19 virus spreads between people who are within six feet of one another and through respiratory droplets produced when an infected person coughs, sneezes, talks, or raises their voice; and

WHEREAS, currently there is no vaccine, treatment, or cure for COVID-19; and

WHEREAS, on March 20, 2020, the McAlester City Manager declared a civil emergency pursuant to City of McAlester Code of Ordinances, Chapter 38, Article IV, Section 80; and

WHEREAS, on March 23, 2020, the McAlester City Council met in an Emergency Meeting and voted to continue the invocation of the extraordinary powers conferred by the McAlester City Codes, Chapter 38, Title IV, Section 80, as necessary to ensure or to restore the public peace; and

WHEREAS, March 25, 2020, the McAlester City Council declared a civil emergency pursuant to the McAlester City Codes, Chapter 38, Title IV, Section 80, adopting the Governor's Executive Order 2020-07 with Amendments, limiting gatherings to no more than ten (10) people. This order also closed bars, gyms and fitness facilities, entertainment venues, and restaurant dining areas, beauty parlors, barber shops, nail salons, and all non-essential retailers. These actions were implemented to flatten the projected curve of COVID-19 transmission, and to preserve medical resources and prevent widespread infection; and

WHEREAS, in Pittsburg County, on May 14, 2020 there were 39 positive cases of COVID-19, on June 14, 2020, there were 43 positive cases of COVID-19, and on July 14, 2020, there were 81 cases of COVID-19; and

WHEREAS, data from the Oklahoma State Department of Health indicates that statewide, the marked increase in COVID-19 cases are generally the result of gatherings of people in close proximity including church services, bars, restaurants, pool parties, weddings, and funerals; and

WHEREAS, the United States Center for Disease Control (CDC) recommends all people two years of age and older wear a cloth face covering in public settings and when around people who don't live in your household, especially when other social distancing measures are difficult to maintain; and

WHEREAS, the CDC recommends that people limit close contact with others outside of your household in indoor and outdoor spaces by keeping space of at least six feet between yourself and other people outside of your home; and

WHEREAS, the passage of an ordinance mandating the wearing of face coverings and limiting operations and gatherings in certain public settings is necessary to protect the health and safety of McAlester residents and to keep businesses open.

Sec. 54-53. Definitions.

- (a) “*Face Covering*” means a covering, or mask, that fully covers a person’s nose and mouth, including, but not limited to, cloth facemasks, towels, scarves, and bandanas as recommended by the CDC. The Face Covering should fit snugly on a person’s face but allow the person to breath easily and worn consistent with the guidance provided by the CDC.
- (b) “*Place of Public Accommodation*” means all places offering items, goods, or services for purchase or rent, including without limitation retail businesses, personal services and spas, entertainment venues, food service facilities, restaurants and bars, hotels, motels, and travel related services, professional offices and services, banks and financial services, repair facilities, and motor vehicle dealerships.
- (c) “*Public Service Area*” means areas of a Place of Public Accommodation wherein employees interact with the public in the normal course of business.
- (d) “*Public Setting*” means any public place where persons congregate which is not a place of public accommodation including without limitation offices, workplaces, houses of worship and ancillary facilities, child care facilities, hospital and health facilities, gymnasiums and physical fitness facilities, adult and youth sports facilities, places and situations where in-person contact is made at the door or window in residential or commercial settings, communal outdoor spaces such as sidewalks, rails, and parks, food trucks, and other outdoor retail entities.
- (e) “*Social Distancing*” or “*Physical Distancing*” means the maintenance of at least a 6-foot minimum social distancing from other individuals outside of your household.

Sec. 54-54. Use of Face Coverings.

Except as otherwise provided herein, persons located within Public Service Areas or Places of Public Accommodation are required to wear face coverings at all times when present therein. Except as otherwise provided herein, persons in any Public Setting wherein Social or Physical Distancing cannot be maintained are required to wear face coverings.

The following persons, locations, and activities are exempt from this requirement:

1. Persons who fall into the U.S. Centers for Disease Control and Prevention’s guidance for those who should not wear Face Coverings due to a diagnosed medical or mental health condition or developmental disability, or the wearing of a Face Covering would lead to a medical emergency. Persons exempted under this subsection should consider the use of a face shield provided that said shield wraps around the sides of the wearer’s face and extends below to the chin. Persons who may fall into this exemption include, but are not limited to:
 - a. Those who are caring for, or interacting with, a person who is hearing impaired and relies on lip reading to communicate;
 - b. Individuals with diagnosed: developmental disabilities, sensory integration concerns or tactile sensitivities, certain mental health conditions, limited cognitive ability, or other disability or medical condition warranting accommodation;
 - c. Individuals engaged in activities that may cause the cloth face covering to become wet, like when swimming;
 - d. Individuals who are engaged in high intensity activities, like exercising or running, when wearing a mask causes difficulty breathing.
 - e. Individuals while working in a setting where cloth face coverings may increase the risk of heat related illness or cause safety concerns due to introduction of a hazard; and
2. Children under five (5) years of age unless required by a school or day care to wear a face covering;
3. Restaurant patrons while they are eating or drinking;
4. Persons exercising in communal outdoor spaces, or persons walking or exercising with other persons from the same household in communal outdoor spaces, as long as Physical Distancing is maintained;
5. Settings where it is not practical or feasible to wear a Face Covering, such as dental services, medical treatments;
6. Occupants in a personal vehicle, personal office, or similarly private space while other persons outside of the person’s household are not present;
7. Private homes; and

8. Offices and workplaces that are not Public Service Areas where Physical Distancing between employees and other occupants can be consistently maintained during hours of operation.

Sec. 54-55. Signage.

Places of Public Accommodation, Educational Institutions, and indoor Public Settings shall post conspicuous signs at all entrances that employees, customers, users, students, and visitors must wear Face Coverings pursuant to this ordinance to be admitted into the premises. The City Manager shall direct the development of a uniform sign meeting this requirement and distribute it free of charge to all regulated entities.

Sec. 54-56. Entry.

Places of Public Accommodation, Educational Institutions, and indoor Public Settings may deny entry to persons who refuse to wear Face Coverings as required by this ordinance.

Owners, managers, or employees of Places of Public Accommodation, Educational Institutions, and indoor Public Settings who have denied or attempted to deny entry to persons who refuse to wear Face Coverings shall notify law enforcement personnel immediately of any such persons refusal to comply or leave said place.

Sec. 54-57. Refusal of Entry and Actions of Refused Persons.

Any employee, customer, user, student, or visitor denied entry to a Place of Public Accommodation, Educational Institution, or indoor Public Setting shall immediately leave said place, any person who refuses to leave, reacts to denial of entry with violence, or threats of violence, of any sort shall be subject to prosecution under criminal trespass, disturbing the peace, disorderly conduct, or similar offenses as circumstances warrant.

Sec. 54-58. Sunset.

Commencing in September of 2020, this ordinance shall be discussed, and possibly acted on, at second regularly scheduled Council Meeting of each month, on the fourth Tuesday of each month, and shall be continued to the next second monthly regularly scheduled Council Meeting unless acted upon by the City Council through repeal, modification, and shall otherwise expire on November 30, 2020; the expiration of all COVID-19 related emergency declarations issued by the City; or repeal, modification, or extension by the City Council through a subsequent ordinance.

Sec. 54-59. Penalties.

~~Any person who knowingly violates this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$10.00, nor more than \$100.00.~~

Individuals: Persons refusing to wear a Face Covering in a Place of Public Accommodation, Educational Institution, or indoor Public Setting as defined herein, or refusing a request to leave said place, may be subject to a fine of up to \$100, and/or prosecution under criminal trespass, disturbing the peace, disorderly conduct or similar offenses as circumstances warrant.

~~Individuals,~~ Places of Public Accommodation, Educational Institutions, or indoor Public Settings failing to comply with this ordinance may be subject to a fine up to \$100, regulatory discipline, and/or civil action as appropriate. Every day a violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such.

Sec. 54-60. Severability.

If any provision, section, or portion of this ordinance is found or determined by a court for any reason to be invalid or unenforceable, those provisions shall be severed from the remaining portion of this ordinance which shall remain effective in the absence of any invalid or unenforceable provision.

SECTION 2. That all other ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of any such conflict or inconsistency and all other ordinances not in conflict herewith shall remain in full force and effect.

SECTION 3. The provisions of this Ordinance are severable, and if any part or provision hereof shall be adjudged invalid by any court of competent jurisdiction, such adjudication shall not affect or impair any of the remaining parts or provisions hereof.

SECTION 4: Emergency Clause. That an emergency is hereby declared to exist, and for the preservation of the public peace, health and safety, by reason whereof it is necessary that all acts take effect immediately and be in full force and effect from, and after the passage and approval.

PASSED AND APPROVED and the EMERGENCY CLAUSE enacted separately BY THE COUNCIL OF THE CITY OF MCALESTER, OKLAHOMA on THIS 20TH DAY OF AUGUST, 2020.

CITY OF MCALESTER, OKLAHOMA
A Municipal Corporation

ATTEST:

By: _____
John Browne, Mayor

Cora Middleton, City Clerk

Approved as to form and legality this _____ day of _____ 2020.

By: _____
William J, Ervin, City Attorney