

ORDINANCE NO. 1911

AN ORDINANCE TO AMEND PAPIILLION MUNICIPAL CODE CHAPTER 125 ENTITLED “HEALTH AND SANITATION” TO ADD NEW SECTIONS 125-11 THROUGH 125-23; TO ENACT REQUIREMENTS FOR THE WEARING OF FACIAL COVERINGS UNDER CERTAIN CIRCUMSTANCES SO AS TO ABATE THE COVID-19 PANDEMIC; AND TO PROVIDE FOR AN EFFECTIVE DATE.

BE IT ORDAINED by the Mayor and City Council of the City of Papillion, Nebraska, as follows:

Section 1. That Papillion Municipal Code Chapter 125 entitled “Health and Sanitation” is hereby amended to add new sections numbered 125-11 through 125-23, reading as follows:

§125-11 - Legislative findings and intent.

A. The City Council hereby finds and declares, based upon the scientific and medical evidence before it, the following:

(1) The Novel Coronavirus (COVID-19) has impacted and continues to dramatically impact the citizens of the City of Papillion, Nebraska.

(2) Exposure to COVID-19 presents a risk of death or serious long-term disability; the exposure is widespread and poses significant risk of harm, including death, to people in the general population of the City of Papillion; there is a particular subset of the population that is more vulnerable to the threat and thus at an increased risk; and the threat is from a novel infectious disease.

(3) Information from the World Health Organization, the United States Centers for Disease Control and Prevention (CDC), Nebraska Department of Health and Human Services, the Sarpy/Cass Health Department, local public health departments throughout Nebraska, and members of the City of Papillion, Sarpy County, and metropolitan medical community indicates that citizens of the metropolitan area, including the City of Papillion, have been and will continue to be exposed due to community transmissions of COVID-19.

(4) The manner in which the spread of COVID-19 cases in the City of Papillion has occurred creates an unacceptable risk to the health, safety, and welfare of the citizens of the City of Papillion.

(5) The number of COVID-19 infections within the City of Papillion continues to increase.

(6) COVID-19 constitutes a threat to the health, safety, and welfare of the City of Papillion.

(7) The Director of the CDC, the Director for the Sarpy/Cass Health Department, doctors and infectious disease experts from the University of Nebraska Medical Center and Nebraska Medicine, as well as others in the medical community, have concluded that the wearing of face coverings by every individual while in public is one of the best methods to slow and stop the spread of COVID-19.

(8) The wearing of face coverings by every individual while indoors in public places

in the City of Papillion will reduce community transmissions of COVID-19, resulting in fewer deaths and serious health complications, and will ease the strain on hospitals and other medical offices and facilities.

(9) The wearing of face coverings by every individual while indoors in public places in the City of Papillion will help keep businesses open and operating, encouraging economic growth and preventing prolonged economic harm.

(10) It is just and proper for the City Council to exercise the authority granted to it by Nebraska statutes and City ordinances in furtherance of protecting the public health, safety, and welfare, including but not limited to Neb. Rev. Stat. sections 16-238, 16-240, 16-246, and 18-1720.

§125-12 - Definitions.

For purposes of this ordinance, the following terms are defined as follows:

A. “Face covering” – A face covering is defined as a covering which, when worn properly, must cover the nose and mouth completely and can include a paper or disposable face mask, a cloth face mask, a scarf, a bandanna, a neck gaiter, or a religious face covering. Medical-grade masks and respirators are sufficient face coverings, but to preserve adequate supplies, their purchase and use is discouraged for those who do not work in a health care setting or in other occupations that require medical-grade personal protective equipment. Masks that incorporate a valve designed to facilitate easy exhaling, mesh masks, or masks with openings, holes, visible gaps in the design or material, or vents are not sufficient face coverings because they allow exhaled droplets to be released into the air.

B. “Premises that are (or is) open to the general public” – Premises that are (or is) open to the general public means property upon or into which any members of the public are allowed to enter. The term is intended to be broadly defined to include without limitation real or personal property owned by or operated by entities that employ or engage workers including private-sector entities, public-sector entities, non-profit entities, regular commercial or business establishments, private clubs, religious centers or buildings, public transportation (including buses, taxis, ride-sharing vehicles, or vehicles used for business purposes), and any place which is generally open to the any members of the public, including educational institutions and daycare facilities.

C. “This ordinance” – This ordinance means the ordinance enacting Sections 125-11 through 125-23, and subsequent amendments or supplements thereto.

§125-13 - Individual facial coverings required.

A. All individuals aged five (5) years and older shall wear a face covering over their mouth and nose while indoors in a premises that is open to the general public including, but not limited to, educational institutions, unless the individual maintains a minimum of six (6) feet of separation or social distance at all times from anyone who is not a member of the individual's household.

B. Notwithstanding subsection A above, face coverings shall not be required if the individual:

- (1) is seeking federal, state, county, or city governmental services;
- (2) is seated at a bar or restaurant to eat or drink, or while immediately consuming food or beverages;
- (3) is engaged in an occupation preventing the wearing of a face covering;
- (4) is obtaining a service or purchasing goods or services that require the temporary removal of the face covering;
- (5) is asked to remove a face covering to verify an identity for lawful purposes;
- (6) is providing a speech, lecture, or broadcast to an audience so long as six (6) feet of distancing from other individuals is maintained; or
- (7) cannot otherwise wear a face covering because of a medical condition, a mental health condition, or a disability that makes it unreasonable for the individual to wear a face covering.

C. Nothing in this section shall prohibit the owner or person in charge of a premises that is open to the general public, including but not limited to the owner or person in charge of any federal, state, city, or other governmental facility, from requiring an individual to wear a face covering during any of the circumstances enumerated in subsection B above or from implementing a more restrictive face covering policy.

§125-14 - Premises that are open to the public - duty to require facial coverings.

A. Any individual or entity which maintains premises that are open to the general public including, but not limited to, educational institutions, shall require all individuals aged five (5) years and older to wear a face covering over their mouth and nose while indoors in said premises, unless the individual maintains a minimum of six (6) feet of separation or social distance at all times from anyone who is not a member of the individual's household.

B. Notwithstanding subsection B above, a face covering of an individual will not be required if the individual:

- (1) is seeking federal, state, county, or city governmental services;
- (2) is seated at a bar or restaurant to eat or drink, or while immediately consuming food or beverages;
- (3) is engaged in an occupation preventing the wearing of a face covering;
- (4) is obtaining a service or purchasing goods or services that requires the temporary removal of the face covering;
- (5) is asked to remove a face covering to verify an identity for lawful purposes;
- (6) is providing a speech, lecture, or broadcast to an audience so long as six (6) feet of distancing from other individuals is maintained; or
- (7) cannot otherwise wear a face covering because of a medical condition, a mental health condition, or a disability that makes it unreasonable for the individual to wear a face covering.

C. Nothing in this section shall prohibit the owner or person in charge of a premises that

is open to the general public, including but not limited to the owner or person in charge of any federal, state, city, or other governmental facility, from requiring an individual to wear a face covering during any of the circumstances enumerated in subsection B above or from implementing a more restrictive face covering policy.

§125-15 - Notice of face covering requirements.

Any individual or entity which maintains premises that are open to the general public, including but not limited to educational institutions, must post one or more signs that are visible to all persons, including workers, customers, and visitors, instructing them to wear face coverings as required by this ordinance. The signs required by this Section must be printed on a poster or paper that is a minimum size of 8.5 inches by 11 inches, and be written or typed in a legible font or typeface that is no smaller than 12 points of leading or 12-point type.

§125-16 - Exceptions.

A. The provisions of this ordinance shall not apply to:

(1) Courts of law; public utilities or federal, state, county, or city operations; medical providers, facilities, or pharmacies; congregate living centers or facilities; group homes and residential drug and/or mental health treatment facilities; shelters; airport travel; election offices; polling places on an election day; or residential dwelling units.

(2) Children under the age of five (5) years. While children aged three (3) and four (4) years may wear a face covering if that child can remove the face covering without assistance, guidance from the CDC states that children two (2) years old and under should never wear a face covering due to the risk of suffocation.

(3) Federal and state activities. Nothing in this ordinance shall be construed to limit, prohibit, or restrict in any way the operations of the federal or state government or the movement of federal or state officials in the City while acting in their official capacity, including federal and state judicial, legislative, and executive staff and personnel.

(4) Individuals at their workplace when wearing a face covering would create a job hazard for the individual or others, as determined by federal, state, or local regulators or workplace safety and health standards and guidelines.

(5) Individuals who are alone in an office, room, a vehicle, the cab of heavy equipment or machinery, or an enclosed work area. In such situations, the individual should still carry a face covering to be prepared for person-to-person interactions and to be used when the individual is no longer alone.

(6) Individuals who are seated at a desk or standing at a stationary work station, provided that the desk or work station has a solid Plexiglas or plastic barrier installed upon it which cannot be moved.

(7) Individuals who are officiating at a religious service.

(8) Individuals communicating with other individuals who are deaf or hard of hearing or who have a disability, medical condition, or mental health condition that makes communication with that individual while wearing a face covering difficult, provided that minimum social distancing of six (6) feet or more is maintained to the extent possible between persons who

are not members of the same household.

(9) Individuals who are engaged in activities, such as swimming or showering, where the face covering will get wet.

(10) Individuals who are exercising in an indoor business or indoor space such as a gym or fitness center, while the level of exertion makes it difficult to wear a face covering, provided that minimum social distancing of six (6) feet or more is maintained at all times.

(11) Individuals in an indoor premises that is generally open to the public while playing a musical instrument that cannot be played when a face covering is worn, provided that a minimum social distancing of six (6) feet or more is maintained at all times.

(12) Individuals actively participating in a team sports activity, while the level of exertion makes it difficult to wear a face covering.

(13) Public safety workers actively engaged in a public safety role, including but not limited to law enforcement personnel, fire fighters, or emergency medical personnel, in situations where wearing a face covering would seriously interfere in the performance of the individual's public safety responsibilities.

B. Nothing in this section shall prohibit the owner or person in charge of a premises that is open to the general public, including but not limited to the owner or person in charge of any federal, state, city, or other governmental facility, from requiring an individual to wear a face covering during any of the circumstances enumerated in subsection B above or from implementing a more restrictive face covering policy.

§125-17 - Public nuisance declared.

Any individual or entity which maintains premises that are open to the general public who fails to comply with the requirements of this ordinance, is hereby declared to be a nuisance and a danger to the public health, safety, and welfare.

§125-18 - Application.

The provisions of this ordinance shall only apply to all persons and property within the corporate limits of the City of Papillion and shall not apply in the extraterritorial jurisdiction of the City.

§125-19 - Penalty.

Any individual or person who is found to have violated any of the provisions of this ordinance shall be guilty of an infraction as defined in Neb. Rev. Stat. Section 29-436 and shall be subjected to the fines set forth in such Section 29-436; provided, however, the fine for an initial offense shall be \$25.00. Each instance of violation of this ordinance may be considered a separate offense.

§125-20 - Civil abatement.

In addition to any other penalty sought or obtained under this ordinance or other applicable law, the City may institute injunctive or other appropriate civil proceedings necessary to obtain

compliance with this ordinance or to abate any nuisance resulting from violations of this ordinance.

§125-21 - Sunset provision.

The requirements imposed by this ordinance shall expire and terminate at such time as the percentage of COVID-19 patients occupying staffed hospital beds drops below twenty-percent (20%) based on a 14-day rolling average, also known as the “yellow” zone in the State of Nebraska Directed Health Measures color phases, unless otherwise extended by ordinance of the City Council.

§125-22 - Report Required.

The Fire Chief, or his or her authorized delegate, shall, on every Tuesday while the provisions of this ordinance remain in effect, prepare or update a report to be delivered to the Mayor and City Council. To the extent that the information is available from the Sarpy/Cass Health Department, the report shall contain information from the prior week on the status of COVID-19 infections in the City, and shall include information on the current number of cases in the City, the number of new cases diagnosed, the number of tests performed, the positivity rate of those tests, the number of new deaths that have occurred, the Papillion area hospital occupancy rate, the ventilator utilization rate, the COVID-19 hospitalization rate, a breakdown of cases by zip code, and any such other information that the said official or delegate deems relevant to the spread of COVID-19 within the City of Papillion.

§125-23 - Severability.

The sections, subsections, paragraphs, sentences, clauses, and phrases of this ordinance are severable, and if any section, subsection, paragraph, sentence, clause, or phrase of this ordinance shall be declared invalid, unenforceable, or unconstitutional by the valid judgment or decree of a court of competent jurisdiction, such invalidity, unenforceability, or unconstitutionality shall not affect any of the remaining sections, subsections, paragraphs, sentences, clauses, or phrases of this ordinance.

Section 2. Effective Date. This Ordinance is deemed an emergency ordinance by reason of the threat of infectious disease harmful to the public health and welfare, pursuant to Neb. Rev. Stat. §16-405 and Papillion Municipal Code Section 55-7. For that reason, this Ordinance shall be in full force and take effect immediately upon its passage by $\frac{3}{4}$ of the members of the City Council and signing by the Mayor, upon proclamation by the Mayor of its emergency nature and immediate effect, upon posting of the Ordinance and proclamation in at least three of the most public places in the City, and upon first publication of the Ordinance as provided below. The City Clerk is directed to effectuate the publishing of this Ordinance for at least one (1) week in a newspaper in general circulation within the City of Papillion, which publication must take place within fifteen days of the passage of this Ordinance by the City Council. The City Clerk shall cause this Ordinance to be published in book or pamphlet form. This Ordinance shall have the same force and effect as though it had been published at large. A copy of said Ordinance shall be filed for use and examination by the public in the office of the City Clerk.

PASSED AND APPROVED this ____ day of _____, 20__.

CITY OF PAPILLION,

DAVID P. BLACK, MAYOR

Attest:

NICOLE BROWN, City Clerk

(SEAL)

City Council:

First Reading: December 1, 2020

Second Reading: December 2, 2020

Third Reading: December 3, 2020