

CITY OF NORFOLK, NEBRASKA

The Mayor and City Council of the City of Norfolk, Nebraska met in special session in the Council Chambers, 309 North 5th Street, Norfolk, Nebraska on the 23rd day of November, 2020, beginning at 12:00 p.m.

Following a moment of silence and the Pledge of Allegiance to the flag of the United States of America, Mayor Josh Moenning called the meeting to order. Roll call found the following Councilmembers present: Jim Lange, Rob Merrill, Fred Wiebelhaus, Thad Murren, Gary L. Jackson, Shane Clausen, and Dick Pfeil. Absent: Corey Granquist.

Staff members present were: City Administrator Andy Colvin, City Attorney Danielle Myers-Noelle, City Clerk Brianna Duerst, Public Safety Director Shane Weidner, Administrative Secretary Deb Johnson, Public Works Director Steve Rames, Risk Manager Lyle Lutt, Fire Chief Scott Cordes, Economic Developer Candice Alder, Police Captain Chad Reiman, Information Systems Manager Jim McKenzie, Programmer Leon Gentrup and Police Chief Don Miller.

The Mayor presided and the City Clerk recorded the proceedings.

The Mayor informed the public about the location of the current copy of the Open Meetings Act posted in the City Council Chambers and accessible to members of the public.

Notice of the meeting was given in advance thereof by publication in the Norfolk Daily News, Norfolk, Nebraska, the designated method of giving notice, as shown by affidavit of publication.

Notice was given to the Mayor and all members of the Council and a copy of their acknowledgement of receipt of notice and agenda is attached to the minutes. Availability of the agenda was communicated in the advance notice and in the notice to the Mayor and Council of this meeting. All proceedings hereafter shown were taken while the convened meeting was open to the public.

Agenda Motions

Councilmember Merrill moved, seconded by Councilmember Jackson to approve the consent agenda as printed. Roll call: Ayes: Councilmembers Lange, Merrill, Wiebelhaus, Murren, Jackson, Clausen and Pfeil. Nays: None. Absent: Granquist. Motion carried.

Councilmember Lange moved, seconded by Councilmember Clausen to adopt the full agenda as printed. Roll call: Ayes: Councilmembers Lange, Merrill, Wiebelhaus, Murren, Jackson, Clausen and Pfeil. Nays: None. Absent: Granquist. Motion carried.

Consent Agenda Items Approved

Minutes of the November 16, 2020, City Council meeting

Regular Agenda Items

Emergency Ordinance No. 5707 (facial coverings, mask mandate)

Councilmember Merrill introduced, seconded by Councilmember Jackson, Emergency Ordinance No. 5707 entitled: AN ORDINANCE OF THE CITY OF NORFOLK, NEBRASKA TO ENACT CHAPTER 11, ARTICLE IV OF THE OFFICIAL CITY CODE ENTITLED "PREVENTION OF COVID-19"; TO PROVIDE LEGISLATIVE FINDINGS AND INTENT; TO REQUIRE INDIVIDUALS TO WEAR FACIAL COVERINGS AND EXCEPTIONS THEREOF; TO PROVIDE FOR THE ENFORCEMENT OF VIOLATIONS AND PENALTIES; TO ESTABLISH A SUNSET PROVISION; TO PROVIDE WHEN THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT; AND TO PROVIDE FOR THE PUBLICATION OF THIS ORDINANCE IN PAMPHLET FORM and moved that the emergency ordinance be passed on first reading. Said ordinance was then read into the record by title by the City Clerk.

Mayor Moenning said he called the Special meeting of the City Council to discuss a proposed emergency ordinance to require facial coverings in the City of Norfolk. The ordinance is centered on data-driven information. Moenning said there are two pieces of data that are indisputable and of key importance. First, our hospital system is taxed, nearing 100% capacity in recent weeks. Second, Madison County is a COVID-19 hotspot within a hotspot. The state of Nebraska is the fifth highest for new infections and Madison County is second among counties in Nebraska for new infections per capita. The measure at hand is to protect citizens, relieve the burden on hospitals, healthcare workers and public safety workers and to help keep business open. Moenning said if the spread of COVID-19 is not reduced, another shut down is likely. Further, Moenning said the ordinance before the Council is modeled after ordinances already in place in Omaha and Kearney. Moenning further noted the Health Board of the City of Norfolk met prior to the Special City Council meeting and recommended adoption of the proposed ordinance.

City Attorney Danielle Myers-Noelle, said the ordinance before elected officials is nearly the same ordinance recently passed by the City of Kearney and is aimed at slowing and reducing the spread of COVID-19 within the City of Norfolk. Based upon data received from the Health Department and medical community, Mayor Moenning directed staff to draft an ordinance that would require the use of masks in all public indoor places. The statutory authority for the mandate come from Nebraska Revised Statute 16-134.

The ordinance requires individuals over the age of five to wear facial coverings while indoors at places that are open to the general public where a minimum six foot distance at all times cannot be maintained. The ordinance does not close any business or restrict hours of operation, but does require businesses to post notice of the facial covering requirement. Noelle noted there are a number of exceptions to the requirement. For example, masks are not required in a bar or restaurant while a person is eating or drinking. The penalty for a person who is in violation of the ordinance will be \$25.00

Noelle further noted that a sunset provision is contained in the ordinance indicating that it will expire and terminate at 11:59 p.m. on February 16, 2021. The ordinance can be extended at that

time. The ordinance also contains an early termination provision if the council makes such a decision with the medical community.

Kelli Driscoll, Faith Regional Health Services (FRHS), said over the last several weeks, FRHS has seen a significant increase in COVID-19 hospitalizations and capacity is running between 85%-95% at any given point. Driscoll said 35%-50% of those patients are COVID-19 patients. Driscoll noted hospital resources are finite and said mitigation efforts take time as there is about a month lag before the increase in cases affects hospitalizations.

Melanie Thompson, Elkhorn Logan Valley Public Health Department (ELVPHD), said cases and, in particular, cases requiring hospitalization due to COVID-19 are rapidly increasing. Thompson said cases have doubled since the middle of September and we are currently in the red zone with no reduction expected. If action is not taken now, we will see an increase in cases and hospitalizations. Thompson said ELVPHD recommends the use of masks as a low-cost effective tool to protect vulnerable community members and presented information on other communities that have implemented mask mandates. Further, the CDC recommends the use of masks as, if used consistently and correctly, most droplets and particles are reduced.

Mike Moreno, spoke in favor of the ordinance and said local officials have asked for the community's help and encouraged citizens to do their part in reducing the spread.

Denise Wilkensen, Norfolk Area Chamber of Commerce, spoke in favor with the goal of keeping businesses open. Wilkensen said we need to do everything we can to ensure the safety of employers, employees and customers, as well as reduce the overall burden on the health care system.

Cash Luhr, spoke in opposition, stating the virus is temporary and feels the choice to wear or not wear a mask should be left up to the individual.

Diane Dickey, spoke in opposition, citing concerns over personal freedoms.

Brian Hoover, spoke in opposition, stating people should have the freedom to choose and gave a testimony on his experience with COVID-19. Hoover questioned if the spikes in cases being seen is due to individuals presumed positive but not tested.

Thompson said positive case numbers are only confirmed cases and that presumed positives are not included in the official numbers.

Michelle Sanchez, spoke in opposition of the ordinance, saying the choice to wear a mask should be left to the individual. Sanchez asked if numbers are down before the expiration date, does the ordinance go away.

Noelle referenced the sunset provision in the ordinance allows flexibility to be removed sooner if supported by data provided by the medical community.

Toni Hoefler, spoke in opposition, saying the ordinance violates civil rights and said many people cannot wear a mask for medical reasons which are confidential.

John Hobbs, spoke in opposition, stating cloth facial coverings are not effective and can give people a false sense of protection. Hobbs expressed concern over where the control stops.

Steve, last name not given, spoke in opposition and asked if case numbers are by county or town.

Thompson said case numbers are reported by county and are not broken down by towns.

Kim Wiseman, spoke in opposition, stating there is a higher number of cases with more testing and noted concerns over conflicting information. Wiseman asked how the ordinance will be enforced.

Don Miller, Police Chief, said the goal of enforcement officers is not to be heavy handed by issuing tickets. The intent is to get voluntary compliance and educate the public. Discretion will be used. Miller said the Police Department is developing a separate phone line for calls related to the ordinance in an effort to keep emergency dispatch lines open for higher priority incidents. Miller also noted there a number of exceptions and situations where wearing a mask may not be appropriate.

Noelle provided clarification on mask requirements in bars and restaurants while eating as well as offices that are able to maintain the six foot distance at all times. Noelle read the definition of a premise that is open to the general public, *“premises that are open to the general public are broadly defined to include entities that employ or engage workers, including private-sector entities, public-sector entities, nonprofit entities, regular commercial or business establishments, private clubs, religious centers or buildings for public transportation (including buses, taxis, ride-sharing vehicles, or vehicles used for business purposes), and any place which is generally open to the public, including educational institutions and daycare facilities.”*

Patrick Donaldson, spoke in opposition citing concerns over personal liberties.

Steve Jessen, spoke in opposition, saying he is not convinced the mandate will solve the issue and that a mask mandate instills fear.

Moening noted prior to the meeting, letters of support and opposition were received and are included as part of the record.

Councilmember Clausen expressed concern over the sunset provision and the benchmark for removing the mandate. Clausen also said an important aspect to consider is the hospital's capacity and who health care workers can effectively care for.

Councilmember Merrill said, “The data got us here, the data will get us out.”

Moening noted there is regular communication with our health partners.

Councilmember Wiebelhaus said a lot of information has received at the meeting and comments from community members that work in the medical field. Wiebelhaus said our hospital may not be equipped to handle a catastrophe with current capacity numbers. Wiebelhaus further said he supports the ordinance because an expiring date is included.

Councilmember Lange said, like any other ordinance, this ordinance requires input from elected officials and staff. Appropriate changes can be made.

Moening said it is an important time to consider our neighbors.

Roll call: Ayes: Councilmembers Lange, Merrill, Wiebelhaus, Murren, Jackson, Clausen and Pfeil. Nays: None. Absent: Granquist. Motion carried. Emergency Ordinance No. 5707 passed on first reading.

Councilmember Lange moved, seconded by Councilmember Jackson, that the statutory rule requiring reading on three different days be suspended.

Roll call: Ayes: Councilmembers Lange, Merrill, Wiebelhaus, Murren, Jackson, Clausen and Pfeil. Nays: None. Absent: Granquist. Motion carried. The motion to suspend the rules was adopted by three-fourths of the Council and the statutory rule requiring reading on three different days was suspended for consideration of said emergency ordinance.

Thereafter Councilmember Lange moved, seconded by Councilmember Merrill, that the statutory rules requiring reading on three different days be suspended and for final passage of the ordinance. The Mayor then stated the question "Shall Emergency Ordinance No. 5707 be passed and adopted?"

Roll call: Ayes: Councilmembers Lange, Merrill, Wiebelhaus, Murren, Jackson, Clausen and Pfeil. Nays: None. Absent: Granquist. Motion carried. The passage and adoption of said ordinance having been concurred in by a majority of all members of the Council, the Mayor signed and approved the ordinance and the City Clerk attested the passage and adoption of the same and affixed her signature thereto. The Mayor then instructed the City Clerk to publish said Emergency Ordinance No. 5707 as required by law.

There being no further business, the Mayor declared the meeting adjourned at 2:20 p.m.

Josh Moening
Mayor

ATTEST:

Brianna Duerst
City Clerk

(S E A L)

I, the undersigned Clerk, hereby certify that the foregoing is the full, true and correct original document of proceedings of Monday, November 23, 2020, had and done by the Mayor and City Council; that all of the subjects included in the proceedings were contained in the agenda for the meeting, kept continually current and available for public inspection at the office of the Clerk; that such subjects were contained in said agenda for at least twenty-four hours prior to the meeting; that at least one copy of all reproducible material discussed at the meeting was available at the meeting for examination and copying by members of the public; that the said minutes were in written form and available for public inspection within ten working days and prior to the next convened meeting of said body; that all news media requesting notification concerning meetings of said body were provided advance notification of the time and place of said meeting and the subjects to be discussed at said meeting.

Brianna Duerst
City Clerk

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