



MEMO

Legal Department

To: Mayor Haila and Ames City Council

From: Mark O. Lambert, City Attorney

Date: May 17, 2021

Subject: Face-covering mandate ordinance

This memo is in two parts: A) Responding to the motion made at the May 11, 2021 Council meeting for a memo on the interplay between the Story County face-covering mandate and the City of Ames if the City's face-covering ordinance expires or is repealed; and B) Regarding the options for the future of the face-coverings ordinance.

A. Interplay of Story County and City of Ames face-covering mandates.

Article III, Sec. 39A of the Iowa Constitution (the "Counties Home Rule" section) states:

If the power or authority of a county conflicts with the power and authority of a municipal corporation, the power and authority exercised by a municipal corporation shall prevail within its jurisdiction.

This provision makes clear that a city ordinance prevails over a county ordinance on the same topic. Also, the "power and authority" of the county government or municipal government is not limited to only ordinances.

Story County has a face coverings policy that is generally similar to the City of Ames ordinance. The County mask mandate is actually a Story County Board of Health regulation, which has to be (and has been) approved by the Board of

Supervisors and per the Iowa Code.¹ The Ames ordinance is found at Section 17.37 of the Ames Municipal Code.

Because of the Iowa Constitution's provision above, we know that the Story County regulation currently is not effective within the corporate municipal boundaries of Ames, since the City has its own face-covering ordinance.

The Story County face-covering regulation does not have an expiration date. It will have to be repealed by action of the Board of Supervisors in order to eliminate the county face-covering mandate.

The City's ordinance is written to sunset on June 30, 2021. At that point, it will no longer be in effect. With the newly-issued CDC guidance, there's a possibility that the ordinance could be repealed earlier.

Because the County Board of Health regulation is still in effect, once the City's face-covering ordinance is no longer in effect, the county regulation will become effective in Ames, unless the Council takes some action.

Power and authority may be exercised by a city council by ordinance, resolution, or motion². The Council has the authority to reject the implementation of the Story County mask mandate in Ames. But in order to do so, merely repealing the City's ordinance or allowing it to sunset/expire, would not accomplish this goal. The City Council must take an affirmative step of some sort. A resolution passed by the City Council saying that it is the policy of the Ames City Council that the Story County face-face-covering mandate will not be in effect within the City would establish that the Story County regulation would not be effective within Ames. I have consulted with the Story County Attorney's office, and that office is in agreement that such a resolution would result in the Story County Board of Health regulation not being in effect within

¹ Iowa Code section 137.104

² "A city council shall exercise a power only by the passage of a motion, a resolution, an amendment, or an ordinance." Iowa Code section 364.3(1).

Ames. If the Council desires to establish such a policy by resolution, I would suggest that it be done at the last meeting held before the ordinance expires on June 30, or if the ordinance is repealed earlier, at the same meeting where the ordinance is repealed.

In summary:

1. If the Ames face-covering ordinance expires or is repealed before the sunset date, the Story County Board of Health face-covering regulation will become effective within the city limits of Ames.
2. If the Council wishes not to have the Story County Board of Health regulation become effective within Ames, the Council has the legal ability to do that, via a resolution establishing that Story County's face-covering mandate will not be in effect within the corporate boundaries of Ames.

B) Options regarding the City of Ames Face-Covering ordinance.

As a response to the global COVID-19 pandemic, the Ames City Council adopted a face-covering mandate ordinance on September 1, 2020. The ordinance became effective on September 4, 2020 and is codified at Section 17.37 of the Ames Municipal Code. The original expiration date was December 31, 2020, but at its final meeting in December 2020, the Council amended the ordinance with a new sunset date, June 30, 2021.

On Friday, May 14, 2021, the federal Centers for Disease Control (CDC) issued new guidelines regarding the wearing of masks or face-coverings for those fully vaccinated. Though there are many subtleties to the CDC guidance, this summary paragraph from the CDC encapsulates the main message of the new guidance: "Fully vaccinated people can resume activities without wearing a mask or physically distancing, except where required by federal, state, local, tribal or territorial laws, rules, and regulations, including local business and workplace guidance." See: <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated-guidance.html>

In response to news coverage of the new CDC guidance, the Council and City staff have received communications from citizens and businesses in Ames asking about, or offering an opinion on, the City's face-covering mandate now that the CDC has changed its guidance.

The City's face-covering ordinance is set to expire after June 30, 2021. If the Council desires to extend the ordinance, it would have to amend the ordinance to do so before June 30, which could be done in time with the first reading taking place on May 25, 2021. The Council can take no action, and simply allow the sunset clause to make the ordinance expire after June 30. The Council could repeal the ordinance through the standard three readings at three different City Council meetings. That would involve first reading of an ordinance repealing the face-covering ordinance at the May 25, 2021 Council meeting; second reading would be at the June 8, 2021 Council meeting, with third & final reading at the June 22, 2021 Council meeting. The repeal would become effective on Friday, June 25, 2021. If the Council desires to repeal the ordinance and to do so more quickly, the Council could schedule the first reading on May 25, 2021 and then suspend the rules requiring three separate readings at three separate Council meetings, as permitted by the Code of Iowa, thereby adopting the repeal in one meeting. This would make the repeal effective on May 28, 2021. Another option would be to amend the ordinance in some fashion, rather than repealing it or allowing it to expire.

ALTERNATIVES:

1. The Council can take no action, and the ordinance will expire and become null and void after June 30, 2021.
2. The Council can direct the City Attorney's office to draft an ordinance repealing the face-covering mandate ordinance, with the first reading at May 25, 2021 Council meeting.

3. The Council can direct the City Attorney's office to draft an ordinance repealing the face-covering mandate ordinance, with the first reading at the May 25, 2021 Council meeting, along with an agenda sub-item to consider a Motion to Suspend the Rules, which would allow the repealing ordinance to be adopted on May 25, 2021.
4. The Council can direct the City Attorney's office to draft an ordinance amending the face-covering ordinance in ways the Council has determined, and extending the sunset date if so desired, to be considered for first reading at the May 25, 2021 Council meeting.
5. The Council can direct the City Attorney's office to draft an ordinance amending the face-covering mandate ordinance by extending the sunset date to some date beyond June 30, 2021.

ALTERNATIVES REGARDING THE STORY COUNTY BOARD OF HEALTH REGULATION:

1. The Council can take no action and allow the Story County Board of Health regulation to become effective within the City of Ames upon the expiration or repeal of the Ames face-covering ordinance.
2. The Council can direct staff to place a Resolution on the agenda for the meeting at which the ordinance is being repealed, or at the last meeting before the ordinance expires, stating that it is the policy of the City of Ames that the Story County Board of Health regulation is not effective within the corporate limits of the city.

ORDINANCE NO. 4420

AN ORDINANCE TO AMEND THE MUNICIPAL CODE OF THE CITY OF AMES, IOWA, BY ENACTING A NEW SECTION 17.37 THEREOF, FOR THE PURPOSE OF FACE COVERING REQUIREMENT REPEALING ANY AND ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT TO THE EXTENT OF SUCH CONFLICT; AND ESTABLISHING AN EFFECTIVE DATE.

BE IT ENACTED, by the City Council for the City of Ames, Iowa, that:

Section One. The Municipal Code of the City of Ames, Iowa shall be and the same is hereby amended by enacting a new Section 17.37 as follows:

“Sec. 17. 37 FACE COVERING REQUIREMENT:

PREAMBLE: This ordinance is being adopted in response to a worldwide pandemic of the novel coronavirus which causes COVID-19. The virus has been spreading locally in Story County, the City of Ames, and on the Iowa State University campus. The U.S. Centers for Disease Control, Iowa Department of Public Health, Story County Board of Health, and Mary Greeley Medical Center have all encouraged people to wear face coverings as a method to slow or prevent transmission of the virus. This ordinance is being adopted pursuant to the Municipal Home Rule Authority as stated in Article III, Section 38A of the Iowa Constitution and Iowa Code section 364.1. It is the intent and belief of the Ames City Council that this ordinance does not conflict with provisions of the Governor of Iowa’s Public Health Disaster Emergency Proclamation regarding COVID-19 which is currently in effect.

(1) Every person in the City of Ames three (3) years of age or older must wear a face covering that completely covers the person’s nose and mouth under the following circumstances:

a. Outside whenever the person cannot stay at least six (6) feet away from others not in the person’s household;

b. Inside any indoor setting or establishment where the public is invited in, including, but not limited to:

i. Grocery, retail, and hardware stores, gas stations and convenience stores, fitness centers, pharmacies, any other indoor public setting when with persons who do not live in the person’s household, and other public settings that are not the person’s place of residence. A childcare facility is not considered a public setting or a facility where the public is invited in.

(2) A person is not required to wear a face covering at the following places or times:

a. While traveling in a personal vehicle alone or with household members.

b. While a person is in the person’s household or the household’s yard, or in another person’s household.

c. While outside, where at least six (6) feet of physical separation from others can be maintained.

d. While at a person's place of employment where at least six (6) feet of physical separation from others can be maintained.

e. While exercising at moderate or high intensity, such as jogging or biking or while engaging in or practicing for sporting activities.

f. While seated inside or outside at a food establishment in the process of eating or drinking.

g. While seated inside or outside at a bar in the process of eating or drinking.

h. While obtaining a service that would require temporary removal of the person's face covering.

i. When federal or state law prohibits wearing a face covering or requires the removal of the face covering.

(3) The following persons are exempt from wearing a face covering:

a. Persons younger than three (3) years of age.

b. Anyone who has a medical condition causing difficulty of breathing or is on oxygen therapy or a ventilator.

c. Anyone who is unconscious, incapacitated, or otherwise unable to remove the face covering without assistance.

d. Anyone who has been advised by a medical or behavioral health professional not to wear face coverings.

e. Anyone actively engaged in a public safety role, including but not limited to law enforcement, firefighters, or emergency medical personnel, although a face covering should be worn if possible.


(4) Compliance with this ordinance shall be obtained through education and encouragement only. There is no penalty for a violation of this ordinance.

SUNSET CLAUSE: This ordinance expires and becomes null and void after December 31, 2020, unless the date in this clause is amended or the ordinance is sooner repealed."

Section Two. All ordinances, or parts of ordinances, in conflict herewith are hereby repealed to the extent of such conflict, if any.

Section Three. This ordinance shall be in full force and effect from and after its passage and publication as required by law.

Passed this 1st day of September, 2020.



Diane R. Voss, City Clerk



John A. Haila, Mayor

Interim Public Health Recommendations From CDC For Fully Vaccinated People

Fully vaccinated people can:

- Resume activities without wearing masks or physically distancing, except where required by federal, state, local, tribal, or territorial laws, rules and regulations, including local business and workplace guidance
- Resume domestic travel and refrain from testing before or after travel or self-quarantine after travel
- Refrain from testing before leaving the United States for international travel (unless required by the destination) and refrain from self-quarantine after arriving back in the United States
- Refrain from testing following a known exposure, if asymptomatic, with some exceptions for specific settings
- Refrain from quarantine following a known exposure if asymptomatic
- Refrain from routine screening testing if feasible



MEMO

To: Mayor and City Council
From: Deb Schildroth, Assistant City Manager
Date: May 17, 2021
Subject: Local Partners Input on Face Covering Ordinance

City Council implemented a face covering ordinance on September 4, 2020 as a public health measure to help reduce the spread of COVID-19. The ordinance was set to expire on December 31, 2020. On November 24, 2020, Council incorporated input solicited from local partners and medical advisors as part of the review in determining the extension of the face covering ordinance. The local partners and medical advisors included Story County Board of Health, Iowa State University, McFarland Clinic, and Mary Greeley Medical Center. All four organizations responded in support of continuing the face covering ordinance, and Council voted to extend the sunset date of the ordinance to June 30, 2021.

At the May 10, 2021 City Council meeting, Council directed staff to collect feedback from those same four local partners and medical advisors in preparation of revisiting the face covering ordinance. A couple of days following the Council meeting, CDC announced new guidance pertaining to face coverings. The guidance states that fully vaccinated people can resume activities without wearing a face covering or physically distancing, except where required by federal, state, local rules including local business and workplace guidance (i.e. healthcare settings, public transportation, prisons, and homeless shelters). The question asked in the solicitation of feedback from Story County Board of Health, Iowa State University, McFarland Clinic, and Mary Greeley Medical Center, was what input or concerns does each entity have if the face covering ordinance is allowed to sunset and not be extended. **The general theme from the responses was to follow CDC guidelines.**

It's important to note that if action is taken to repeal the ordinance, then any face covering requirements that may continue in schools, businesses, stores, etc. is at the discretion of those entities.

Additionally, the City's transit service, CyRide, will need to continue wearing face coverings due to the federal directive they are currently required to follow. This directive also applies to riders on the buses.

Because CDC guidelines can change quickly, Council may want to consider a motion supporting the continued monitoring of the CDC guidelines and information on positivity rate, hospitalizations, and vaccinations from our medical advisors in Story County.

Please find attached to this memo the responses from the local partners and medical advisors.

Mary Greeley Medical Center

From: Dieter, Brian <dieter@mgmc.com>

Sent: Monday, May 17, 2021 8:44 AM

To: Schildroth, Deb <deb.schildroth@cityofames.org>

Cc: Deardorff, Amber <deardorff@MGMC.COM>

Subject: Re: City of Ames Face Covering Ordinance - Expires June 30 2021 - INPUT REQUESTED ASAP

[External Email]

We are supportive of following as closely as possible the CDC guidance. We are also cognizant of the difficulty of having a mask mandate for those not vaccinated- that said, mandate currently in place should be allowed to lapse-

Brian Dieter

Chair, Story County Board of Health

From: John Paschen <jpaschen@mcfarlandclinic.com>

Sent: Sunday, May 16, 2021 1:34 PM

To: Schildroth, Deb <deb.schildroth@cityofames.org>

Subject: Re: City of Ames Face Covering Ordinance - Expires June 30 2021 - INPUT REQUESTED ASAP

[External Email]

Deb, I would be more than happy to give you my thoughts. The world has certainly changed considering COVID-19 over the past 48 hours and it seems we are all trying to catch up. I expect more changes come out as the weeks go on. I will tell you the BOH will meet this week to discuss our own mask mandate and how to handle that.

However, here are my current thoughts: It is important to know the CDC guidelines, though quite game changing, ONLY apply to adults that have been fully vaccinated(though you could easily include teenagers that have been fully vaccinated for COVID). A consideration the city council may consider is recommending to businesses they allow people to be present without a mask if they report themselves as being completely vaccinated. I think they can ask but, with the governors impending legislation that we all expect her to sign, I do not think they should require proof.

I feel it is also important to support businesses in the decision to still require masks in their stores. Individual employees may be nervous about having people present in a business without a mask, or could not be fully vaccinating themselves,or have a medical condition that makes them at high risk for COVID-19 complications. People in the service industry have suffered significant stress due to risks put on them during this pandemic and support from all forms of government is reasonable.

Public transportation, homeless shelters, medical facilities and prisons should continue to require masks of all present as per the CDC guidelines.

Please keep in mind, the impending legislation about vaccine passports may have a real impact on whether businesses can ask about vaccine status so legal input(the BOH expects to get some) will be needed.

A final thought--the CDC guidelines DO NOT say it is OK for children in school to go without a mask. The teachers can go without a mask if they have been vaccinated (but I do not think they should as modeling good behaviour for their students is important). Many schools are jumping on the band-wagon to stop masks in school and I do not feel that should be supported in our schools. I expect the CDC to come out with mask guidelines for schools soon.

Iowa State University

From: Baldwin, Erin R [AVPHS] <baldwine@iastate.edu>
Sent: Monday, May 17, 2021 8:14 AM
To: Schildroth, Deb <deb.schildroth@cityofames.org>
Cc: Vanderheyden, Brian B [WLNSS] <brianv1@iastate.edu>; Newton, Michael R [P SAF] <mrnewton@iastate.edu>; Oliver, Clayton A [EHS] <coliver@iastate.edu>
Subject: RE: City of Ames Face Covering Ordinance - Expires June 30 2021 - INPUT REQUESTED ASAP

[External Email]

Hi Deb,

Happy Monday. Clayton forwarded me your email and I said I would be happy to respond. We are finalizing a campus memo that will communicate how ISU plans to implement the new CDC guidance. Either Clayton or I will be happy to forward to the memo when it is complete, and I'm hopeful it will happen today or tomorrow morning so it can be helpful as the Council holds their special meeting. We will be back in touch as soon as we have a document to share.

Thanks much,
Erin

McFarland Clinic

From: Roger Kluesner <rkluesner@mcfarlandclinic.com>
Sent: Monday, May 17, 2021 8:44 AM
To: Schildroth, Deb <deb.schildroth@cityofames.org>
Subject: Re: City of Ames Face Covering Ordinance - Expires June 30 2021 - INPUT REQUESTED ASAP

[External Email]

Deb,
The CDC explicitly excludes health care facilities from their 5/16 recommendation. McFarland Clinic will continue to require masking for staff, patients, and visitors in all of our facilities. We do see patients who are immunocompromised and/or cannot receive the vaccine therefore we will continue the masking policy to maximize safety for all our staff/patients/visitors. We will continue to closely monitor the CDC's guidance as our communities move from a mask mandate as a public health measure to a mask recommendation as part of an individual risk assessment.
Roger K

14 Day percent past 30 days

