

ORDINANCE NO. 2020-08

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF MIAMI, OKLAHOMA ENACTING SECTION 13-3 (MASKS REQUIRED ON CITY FACILITIES AND PROPERTY) OF ARTICLE I (IN GENERAL) OF CHAPTER 13 (MISCELLANEOUS PROVISIONS AND OFFENSES) OF THE CODE OF ORDINANCES; PROVIDING SEVERABILITY; PROVIDING FOR CONFLICTING PROVISIONS; AND ESTABLISHING AN EMERGENCY.

I. Purpose. The Miami City Council finds that the current COVID-19 pandemic requires the emergency adoption of certain preventative measures to protect the health, safety and welfare of the citizens of the City of Miami and surrounding areas.

II. Findings of Fact.

A. The world is experiencing an outbreak of a respiratory disease caused by the SARS-CoV-2 virus ("COVID-19"), and

B. On March 11, 2020 the World Health Organization (WHO) declared the corona virus COVID-19 disease to be a pandemic; and

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

D. On March 15, 2020, the Governor of the State of Oklahoma 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

E. On March 21, 2020 the City Council of the City of Miami declared a health disaster caused by the COVID-19 virus pandemic; and

F. There is currently not available a vaccine or cure for COVID 19; and

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

H. The CDC recommends that all people two years of age and older wear face coverings when in public settings and around people who do not live in the same household, particularly when other social distancing measures cannot be maintained; and

I. The CDC also recommends that people limit close contact with others outside of the same household by maintaining a distance of at least six feet between yourself and others, in both indoor and outdoor spaces; and

J. With the transmission of COVID-19 and related hospitalizations continuing to increase across Oklahoma, including in the City of Miami and Ottawa County, The City Council recognizes that provisions to protect the life and health of residents and employees of the City of Miami as set forth below are essential; and

K. It is the continuing duty of the City Council to protect the health and safety of the City, its inhabitants and employees, to preserve the workings of the core functions of government, and to do so the City of Miami has a special obligation to keep its employees as safe as possible during this pandemic; and

L. To date, the City of Miami has had 32 non-first responder employees test positive for COVID-19 and 15 first responders that were forced to follow the CDC Guidelines for First Responders; and

M. In addition, to date, the City of Miami has had 70 employees quarantined for 14 days each due to exposure to the COVID-19 virus, with another 69 employees identified as

having a possible exposure, which did not require a quarantine at that point under CDC Guidelines; and

N. To date, based on the two preceding findings, the City of Miami has had to pay 4,749 hours of COVID-19 related FERCA Emergency Sick Leave at a cost to the City and its taxpayers of \$71,016.42; and

O. That the City of Miami is a small enough entity that if just one employee in a particular department becomes COVID infected, it could shut down the entire department for two weeks or longer; and

P. Article 2, Section 6, subparagraph 2 of the City Charter provides that the Council may enact municipal legislation subject to limitations as may now or hereafter be imposed by the Oklahoma Constitution and law; and

Q. The Oklahoma Emergency Management Act of 2003, 63 O.S. §§683.1, *et seq.*, and 11 O.S. § 22-120 authorizes the City Council, in the interest of public health, safety and welfare to make such other orders as are imminently necessary for the protection of life and property; and

R. The City Council clearly understands that there is a very vocal segment of the citizenry that feels any mandate in the public health interest by the Council would be an unconstitutional infringement of their individual rights as citizens; however, the Council also notes that over a century ago, in a case dealing with the Commonwealth mandating vaccinations to stop the spread of the smallpox epidemic, the U. S. Supreme Court ruled in the case of *Jacobson v. Massachusetts*, 197 U. S. 11, 25 S. Ct. 358, 49 L. ED. 643, that such a mandate is constitutional and appropriate. The Court said:

The defendant insists that his liberty is invaded when the State subjects him to fine or imprisonment for neglecting or refusing to submit to vaccination; that a compulsory vaccination law is unreasonable, arbitrary and oppressive, and, therefore, hostile to the inherent right of every freeman to care for his own body and health in such way as to him seems best, and that the execution of such a law against one who objects to vaccination, no matter for what reason, is nothing short of an assault upon his person. **But the liberty secured by the Constitution of the United States to every person within its jurisdiction does not import an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint.** There are manifold restraints to which every person is necessarily subject for the common good. On any other basis, organized society could not exist with safety to its members. **Society based on the rule that each one is a law unto himself would soon be confronted with disorder and anarchy. Real liberty for all could not exist under the operation of a principle which recognizes the right of each individual person to use his own, whether in respect of his person or his property, regardless of the injury that may be done to others. . . .**

Even liberty itself, the greatest of all rights, is not unrestricted license to act according to one's own will. It is only freedom from restraint under conditions essential to the equal enjoyment of the same right by others. . . .

Upon the principle of self-defense, of paramount necessity, a community has the right to protect itself against an epidemic of disease which threatens the safety of its members.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF MIAMI, OKLAHOMA:

Section 1 - New Law

Section 13-3 of the Code of Ordinances is enacted to read as follows:

Masks required on City facilities and property.

Effective immediately, and except as otherwise provided herein, all persons on property, including buildings and office space, owned or leased by the City of Miami, Oklahoma, shall wear a facial covering or mask (as deemed appropriate by CDC Guidelines) over the mouth and nose at all times where physical distancing measures may be difficult to observe. This only applies to persons while indoors or when in an outdoor space, wherever it is not feasible to maintain six feet of social distance from another person. Facial coverings or masks are not required in the following circumstances:

- A. In state owned and leased vehicles, if only occupied by one occupant;
- B. When a person is alone in an enclosed space, such as an individual office;
- C. When the individual has a bona fide religious objection to wearing a facial covering or mask;
- D. While eating or drinking;
- E. When a licensed healthcare provider has determined that wearing a facial covering or mask causes or aggravates a health condition for the individual;
- F. When wearing a facial covering or mask would prevent the receipt of services or performing work in the course of employment;
- G. When complying with the directions of law enforcement or for the purposes of verifying a person's identity; and
- H. Children under the age of 10.

Enforcement of this ordinance shall focus first on educating and working to promote the mitigation of the spread of COVID-19. A person entering or remaining in a City facility in violation of this ordinance shall be notified of the provisions of this ordinance and will be provided an opportunity to explain an exception to this ordinance. If the person not wearing a mask, does not provide an exception as provided in this ordinance, they shall be offered a mask or the option to leave the location. If the person fails or refuses to do either of these, then any and all City employee(s), except duly authorized law enforcement officers, dealing with that individual shall refuse to service or otherwise deal further with the individual. If the individual further refuses to wear a mask or leave the City facility, they may be subject to a criminal citation and be subject to prosecution under criminal trespass (§ 13-49), disturbing the peace (§13-116), interference with an officer (§13-223) or similar offenses as the circumstances warrant.

It is the intent of the City Council that this ordinance is to be temporary in nature. It is therefore intent of this enacting City Council that when the emergency nature of the pandemic which has given rise to the necessity of this ordinance is deemed to be over, in the opinion of the then existing City Council, that such Council repeal this ordinance.

Section 2 - Severability

If any provision, paragraph, word, section or article of this Ordinance is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, sections and chapters shall not be affected and shall continue in full force and effect.

Section 3 - Conflicting Provisions

If any provision, paragraph, word, section or article of this Ordinance conflicts with the provisions of any other Ordinance, then the provisions of this Ordinance shall be deemed to have superseded all conflicting provisions previously entered into effect.

Section 4 - Effective Date

[Choose One (1)]

_____ Pursuant to 11 O.S. §14-103, this Ordinance shall take effect thirty (30) days from its final passage unless the City Council specifies a later date:

[OR]


X EMERGENCY CLAUSE. For the immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist whereby this Ordinance shall take effect immediately upon passage and publication as required by law. The question of emergency must be ruled upon separately and approved by the affirmative vote of at least ¾ of ALL the members of the City Council (4 affirmative votes required). As required by 11 O.S. §14-103, an emergency measure must state in a separate section why it is necessary that the measure become effective immediately; the reason for the emergency measure is as follows:

The immediate implementation of this ordinance is essential to protect the health and safety of the City, its inhabitants and employees and to preserve the workings of the core functions of government, and to do so the City of Miami has a special obligation to keep its employees as safe as possible during this pandemic.


PASSED AND APPROVED this 1st day of December 2020.


Bless Parker, Mayor

ATTEST:


Melissa Moore, City Clerk

APPROVED:


Ben Loring, City Attorney

