

Legistar ID No.: _____

AGENDA REQUEST FORM

FOR: Council Meeting of June 1, 2021

FROM: Mayor Lioneld Jordan

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:


AN ORDINANCE TO AMEND ORDINANCE 6323 PURSUANT TO THE NEW RECOMMENDATIONS OF THE CENTER FOR DISEASE CONTROL AND PREVENTION AND THE CITY BOARD OF HEALTH

APPROVED FOR AGENDA:



Mayor Lioneld Jordan

5/26/2021
Date



City Attorney Kit Williams

5/26/2021
Date



OFFICE OF THE
CITY ATTORNEY

DEPARTMENTAL CORRESPONDENCE



Kit Williams
City Attorney

Blake Pennington
Assistant City Attorney

Jodi Batker
Paralegal

TO: Mayor Jordan
City Council

CC: Susan Norton, Chief of Staff

FROM: Kit Williams, City Attorney

DATE: May 26, 2021

RE: Council's Recommendations to Amend Fayetteville's Mask Mandate to Conform to Recommendations of the CDC and Fayetteville Board of Health

Governor Hutchinson recently confirmed that he would not extend his pandemic emergency declaration beyond May of this year. Pursuant to Section 5 of Ordinance 6323 (your mask mandate ordinance), the City Council needs to review this ordinance "immediately following the end of the state-declared emergency." The City Board of Health recently issued several recommendations in consideration of the new guidelines issued by the Center for Disease Control and Prevention (CDC). Thanks for discussing this topic during your Agenda Session yesterday evening.

I have worked your comments and suggestions into the draft ordinance I had earlier supplied to you. This ordinance would **amend rather than repeal** Ordinance 6323. First, it adopts the recommendation of the City Board of Health (which are attached as an exhibit) that all residents should be vaccinated as soon as possible. Later sections would continue your mask mandate requirements, but directs the mandate only to **not fully vaccinated** persons (except for those in healthcare settings, on mass transit, and in homeless shelters where all should continue to wear masks) pursuant to both the CDC and City Board of Health recommendations. Finally, the Sunset Clause would obey state law to remove all such city requirements when that state law becomes effective on July 28, 2021.

Mayor Jordan is now sponsoring this revised ordinance for your consideration at the June 1st meeting.



113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323

Ordinance: 6323

File Number: 2020-0503

AN ORDINANCE TO REQUIRE PERSONS TO WEAR FACE MASKS THAT COVER THE NOSTRILS AND MOUTH TO HELP RESTRICT THE SPREAD OF THE COVID-19 VIRUS, TO ESTABLISH REASONABLE EXEMPTIONS, TO OPERATE A NON-EMERGENCY BUSINESS SUPPORT HOTLINE, TO SET PRACTICAL ENFORCEMENT CONDITIONS, AND TO APPROVE A BUDGET ADJUSTMENT

WHEREAS, the spread of the Covid-19 virus has been accelerating in Washington County; and

WHEREAS, the administrator of the Washington Regional Medical System has said it is critically important to take the recent surge in COVID-19 cases seriously, and also has asked the community to "wear a mask when out in public;" and

WHEREAS, the Coroner of Washington County, Roger Morris, has reminded people to wear a mask to protect others; and

WHEREAS, Jennifer Dillaha of the Arkansas Department of Health, has said that wearing a mask is the most effective action that can be taken to slow the spread of the Covid-19 virus; and

WHEREAS, numerous other epidemiologists have insisted that widespread use of a face mask is necessary to prevent the more rapid spread of the Covid-19 virus, especially when humans gather in groups, and thereby necessary for the safety and health of Fayetteville citizens, residents and visitors; and

WHEREAS, employees and most members of the public in public service areas of places of public accommodation should be required to wear masks to cover their nostrils and mouth for the health and safety of all, subject to certain exceptions; and

WHEREAS, businesses cannot reasonably implement health directives as intended without municipal support services; and

WHEREAS, the legal standard of willful neglect can be used to shield any business making a good faith attempt to implement this ordinance from any penalty whatsoever; and

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby determines that the health and safety of Fayetteville residents require that persons within public service areas in all places of public accommodation are required to constantly wear face masks covering the nostrils and mouth of such persons subject to the following exceptions:

- A. Masks may be removed while consuming food or drinking a beverage and exercising if social distancing and disinfection best practices are also followed.
- B. Settings with ten (10) or fewer persons present, such as small business offices which do not serve the public in person, and areas without normal public access, such as semi-private offices and workshops, do not require masks, unless persons cannot follow social distancing best practices
- C. Reasonable accommodations may be made for individuals with a disabling condition that prevents wearing a face mask.
- D. Masks may be removed in outdoor settings generally while best practices to maintain social distance are followed. Masks shall be worn at managed events when attendance and format prevent social distancing.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby determines that the health and safety of Fayetteville residents require that all businesses, offices, shops, and manufacturing and similar facilities are required to post conspicuous signs at all entrances to their establishment that employees, customers and visitors to their establishment must wear face masks pursuant to the rules stated in Section 1 of this ordinance to be admitted into their premises.

Section 3: That the City Council of the City of Fayetteville, Arkansas hereby determines that places of public accommodation are required to provide disposable face masks for free or a nominal cost for members of the public seeking to enter their establishments and are required to deny entry to members of the public who refuse to wear face masks as required in Section 1.

Section 4: That the City Council of the City of Fayetteville, Arkansas hereby approves a budget adjustment of \$100,000.00 to operate a public safety campaign to raise community rates of

mask-wearing.. The campaign shall include the distribution of free face masks to Fayetteville businesses, the operation of a business support hotline, and an outreach strategy focused on high-interaction sites. The non-emergency business support hotline shall be available for businesses to request technical and/or field support for any reason related to our adaptation to the Covid-19 virus, including requesting free masks for distribution to their customers, the creative use of outdoor space, and generally when implementing health directives and emerging best practices.

Section 5: Sunset. After the governor's emergency declaration ends, an ordinance to repeal this ordinance shall be placed on the agenda immediately following the end of the state-declared emergency. The City Council at that time shall act on that ordinance with all haste, either repealing this ordinance in whole, in part, or extending the requirement and associated programs.

Section 6: Penalties on individuals. Individuals which refuse to wear a mask when required will be denied entry to places of accommodation. Places of accommodation may call either the non-emergency hotline for assistance, or they may call 911 if the situation is an emergency. There is no other penalty for refusing to wear a face mask, but disorderly conduct and threatening or assaulting another person are crimes that can still be enforced.

Section 7: Penalties on businesses. No business shall suffer a penalty unless that business fails to implement the requirements of this ordinance due to willful neglect. In that case, failure to enforce the provisions of this ordinance shall constitute a violation subject to the penalties allowed in §10.99 **General Penalty** of the *Fayetteville Code*.

Section 8: Severability clause. If any provisions, sections 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 portions of this ordinance which shall remain effective in the absence of any invalid or unenforceable provisions.

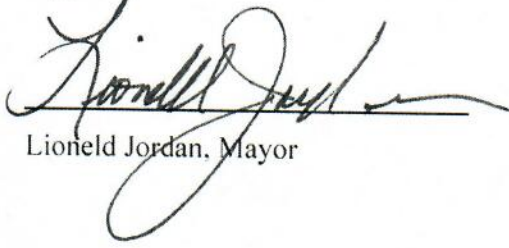
Section 9: That the City Council of the City of Fayetteville, Arkansas hereby determines that this ordinance should become effective without delay because widespread use of a face mask is necessary to prevent the more rapid spread of the Covid-19 virus, especially when humans gather in groups, which is necessary for the public peace as well as the health and safety of Fayetteville residents. Therefore, the City Council hereby declares an emergency exists such that this ordinance shall become effective immediately upon its passage and approval.

PASSED and APPROVED on 6/16/2020


Ordinance: 6323

File Number: 2020-0503

Approved:


Lioneld Jordan, Mayor

Attest:


Kara Paxton, City Clerk Treasurer



ORDINANCE NO. _____

AN ORDINANCE TO AMEND ORDINANCE 6323 PURSUANT TO THE NEW RECOMMENDATIONS OF THE CENTER FOR DISEASE CONTROL AND PREVENTION AND THE CITY BOARD OF HEALTH

WHEREAS, the City of Fayetteville followed the recommendations of the Center for Disease Control and Prevention (CDC) to establish its local regulation of face masks in places of public accommodation for Fayetteville businesses when it enacted Ordinance 6323; and

WHEREAS, on May 13, 2021 the CDC made substantial changes in its recommendations for wearing face masks and stated: “If you are fully vaccinated, you can resume activities that you did before the pandemic”; and

WHEREAS, the CDC further stated: “Fully vaccinated people can resume activities without wearing a mask or physically distancing...”; and

WHEREAS, the CDC continued its recommendation for mask wearing and physically distancing for all not fully vaccinated persons for all indoor places of public accommodation and most outdoor gatherings; and

WHEREAS, the Fayetteville Board of Health passed the attached recommendations to the City Council including: “2. Those persons that are fully vaccinated should no longer be required to wear masks within the City of Fayetteville, with the following exceptions: in healthcare settings, on mass transit, in prisons and jails, and in homeless shelters;” and

WHEREAS, Governor Hutchinson confirmed on Thursday, May 20th that he would not extend his pandemic emergency declaration which requires reconsideration of your mask mandate ordinance pursuant to its fifth section.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby joins with the City Board of Health and continues its recommendation that all residents should be vaccinated as soon as possible.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby amends Ordinance 6323, passed unanimously by the Fayetteville City Council on June 16, 2020, by first by amending its Section 1’s initial introductory language requiring all persons to constantly wear face masks to the following:

“That the City Council of the City of Fayetteville, Arkansas hereby determines that the health and safety of Fayetteville residents requires that all persons should be required to continue to wear face masks in healthcare settings, on mass transit and in homeless shelters, and that all not fully vaccinated persons within public service areas in all places of public accommodation are

required to constantly wear face masks covering the nostrils and mouth of such unvaccinated person subject the following exceptions:”

The remaining subsections A., B., C., and D remain effective and unchanged and a new subsection E. shall be added as follows:

“E. Children of less than two years of age shall not be required to wear face masks.”

Section 3: That the City Council of the City of Fayetteville, Arkansas hereby amends Section 2 of Ordinance 6323, by adding “not fully vaccinated” in front of “employees, customers and visitors...”

Section 4: That the City Council of the City of Fayetteville, Arkansas hereby amends Section 3 of Ordinance 6323 by adding to the last clause prior to “members of the public” the following: “not fully vaccinated”.

Section 5: That the City Council of the City of Fayetteville, Arkansas hereby amends Section 5 of Ordinance 6323 by repealing it in its entirety and enacting a new Section 5 as follows:

“Section 5: Sunset. Because the Legislature enacted laws which become effective on July 28, 2021 prohibiting cities from protecting their citizens, residents and visitors by mask or vaccination mandates, this ordinance and Ordinance 6323 shall become ineffective, unenforceable and inoperable on July 28, 2021.”

Section 6: Emergency Clause. That the City Council of the City of Fayetteville, Arkansas hereby determines that this ordinance should become effective without delay because of the CDC’s and City Board of Health’s recommendations that unvaccinated persons still need to wear masks in most indoor areas while fully vaccinated person do not need to wear face masks, this amending ordinance is necessary for the public peace as well as the health and safety of Fayetteville residents. Therefore, the City Council hereby declares an emergency exists such that this ordinance shall become effective immediately upon its passage and approval.

PASSED and APPROVED this 1st day of June, 2021.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
KARA PAXTON, City Clerk/Treasurer



CITY OF
FAYETTEVILLE
ARKANSAS

To: Fayetteville City Council
Mayor Lioneld Jordan

From: Fayetteville Board of Health
Fayetteville City Health Officer

RE: Fayetteville Mask Recommendations, Revised

Date: May 17, 2021

The Covid vaccines have proven to be safe and effective. Several large studies which show that fully vaccinated persons are at low risk for illness, infection, and viral transmission of SARS-CoV-2. Furthermore, evidence suggests that the vaccines also provide protection against variant strains of SARS-CoV-2. Based upon scientific evidence, the Fayetteville Board of Health and the City Health Officer make the following recommendations to the City Council:

1. We strongly recommend that all citizens be vaccinated as soon as is feasible.
2. Those persons that are fully vaccinated should no longer be required to wear masks within the City of Fayetteville, with the following exceptions: in healthcare settings, on mass transit, in prisons and jails, and in homeless shelters.
3. Fully vaccinated people are those that are at least 14 days post receiving their second dose of either the Pfizer or the Moderna vaccines or 14 days post receiving the single dose Johnson and Johnson vaccine.
4. Unvaccinated and partially vaccinated persons need to wear their masks until they are fully vaccinated. This is to protect themselves and other unvaccinated and partially vaccinated persons from becoming ill with Covid-19.
5. We understand that knowing who is and is not vaccinated is not feasible.
6. We encourage mask wearing for those that still feel more comfortable doing so for whatever reason, especially those with underlying health conditions or on medications that might limit the efficacy of the vaccines.
7. We support local businesses that still require masks for all patrons recognizing that some businesses have patrons that are not yet eligible to be vaccinated.
8. We encourage our citizens to be respectful of each individual's decision to either wear a mask or not.
9. All of the above is subject to change depending upon CDC guidelines and local conditions. For example, if the new cases/day in Washington County are over 8 cases/day on a 14-day rolling average, this could cause the Board of Health to recommend all citizens wear a mask in public indoor venues.

References:

Note: Preprints have not been peer-reviewed. They should not be regarded as conclusive, guide clinical practice/health-related behavior, or be reported in news media as established information.

1. Honein MA, Christie A, Rose DA, Brooks JT, Meaney-Delman D, Cohn A, et al. Summary of Guidance for Public Health Strategies to Address High Levels of Community Transmission of SARS-CoV-2 and Related Deaths, December 2020. MMWR Morb Mortal Wkly Rep. 2020;69(49):1860-7.