

AGENDA REQUEST FORM

FOR: Council Meeting of November 16, 2021

FROM: Council Members Sloan Scroggin and Holly Hertzberg

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

AN ORDINANCE TO REPEAL ORDINANCES 6465 AND 6486 TO END THE MASK MANDATE BECAUSE NEW COVID -19 VIRUS INFECTIONS AND HOSPITALIZATIONS HAVE NOW BEEN REDUCED, MORE VACCINATIONS HAVE BEEN ADMINISTERED, AND VACCINES ARE NOW AUTHORIZED AND AVAILABLE FOR ALL AMERICANS FIVE YEARS OLD AND OLDER AND DECLARE AN EMERGENCY

APPROVED FOR AGENDA:

Council Member Sloan Scroggin

Date

Holly Hertzberg

Council Member Holly Hertzberg

11/5/21

Date

[Signature]

City Attorney Kit Williams
Approved as to form

November 5, 2021

Date

Williams, Kit

From: Hertzberg, Holly
Sent: Friday, November 05, 2021 1:06 PM
To: Williams, Kit
Subject: Re: mask mandate
Attachments: Agenda Request Repeal Mask Mandate.pdf

Kit, I have signed the form attached. Thank you!

From: Williams, Kit <kwilliams@fayetteville-ar.gov>
Sent: Friday, November 5, 2021 12:57 PM
To: Scroggin, Sloan <sloan.scroggin@fayetteville-ar.gov>; Hertzberg, Holly <holly.hertzberg@fayetteville-ar.gov>
Cc: Pennington, Blake <bpennington@fayetteville-ar.gov>
Subject: RE: mask mandate

Sloan and Holly,

Please confirm that I can use this email as your authority to place this ordinances into Legistar for the agenda session.

Kit

From: Scroggin, Sloan
Sent: Thursday, November 04, 2021 8:55 PM
To: Hertzberg, Holly <holly.hertzberg@fayetteville-ar.gov>; Williams, Kit <kwilliams@fayetteville-ar.gov>
Cc: Pennington, Blake <bpennington@fayetteville-ar.gov>
Subject: Re: mask mandate

That sounds great. Thanks for you work on this!

From: Hertzberg, Holly <holly.hertzberg@fayetteville-ar.gov>
Sent: Thursday, November 4, 2021 4:30 PM
To: Williams, Kit <kwilliams@fayetteville-ar.gov>
Cc: Scroggin, Sloan <sloan.scroggin@fayetteville-ar.gov>; Pennington, Blake <bpennington@fayetteville-ar.gov>
Subject: Re: mask mandate

Kit,

This looks great, thank you for all your work on this! If you and Sloan would agree to it, I would like to reword section 2 to read "hereby recommends unvaccinated persons continue wearing masks" so that there is no confusion on enforcement. Otherwise, I'm good to sign off on my end. Let me know if you need anything from me.

Thank you!

Holly Hertzberg
City Council Member
Ward 4 Position 2
Fayetteville, AR 72701
holly.hertzberg@fayetteville-ar.gov
[479.777.1758](tel:479.777.1758)

On Nov 4, 2021 at 4:00 PM, <[Kit Williams](mailto:Kit.Williams)> wrote:

Holly and Sloan,

I have drafted an additional Section 2 and an Emergency Clause on the first draft of the Repeal of the mask mandate. I actually recommend this version. Please let me know your thoughts.

Kit

From: Williams, Kit

Sent: Wednesday, November 03, 2021 5:20 PM

To: Hertzberg, Holly <holly.hertzberg@fayetteville-ar.gov>; Scroggin, Sloan <sloan.scroggin@fayetteville-ar.gov>

Subject: RE: mask mandate

Sloan and Holly,

Attached is a draft, proposed ordinance to repeal the mask mandate. Please let me know what changes, if any, are needed.

Kit

From: Hertzberg, Holly

Sent: Wednesday, November 03, 2021 1:18 PM

To: Williams, Kit <kwilliams@fayetteville-ar.gov>

Subject: Re: mask mandate

Kit,

Yes please, thank you for including me!

Holly

On Nov 3, 2021 at 12:54 PM, <[Kit Williams](mailto:Kit.Williams)> wrote:

Holly,

Sloan has indicated that he wishes to end the mask mandate. Will you want to be a co-sponsor of the ordinance to do so?

Kit



OFFICE OF THE
CITY ATTORNEY

DEPARTMENTAL CORRESPONDENCE



Kit Williams
City Attorney

Blake Pennington
Assistant City Attorney

Jodi Batker
Paralegal

TO: Mayor Jordan
City Council
Kara Paxton, City Clerk/Treasurer

CC: Susan Norton, Chief of Staff

FROM: Kit Williams, City Attorney

A handwritten signature in blue ink that reads "Kit Williams".

DATE: November 5, 2021

RE: Repeal of Mask Mandate Ordinances

Because of surging infections of unvaccinated persons in Fayetteville and throughout Arkansas which was straining our local hospitals and their Intensive Care Units, the City Council in a Special City Council Meeting enacted Ordinance 6465 requiring a mask mandate for most indoor places of public accommodation on August 6, 2021. After Governor Hutchinson later ended his Proclamation of Pandemic Emergency, the City Council extended the effectiveness of the Mask Mandate by passing Ordinance 6486 on October 5, 2021. Both of these ordinances are attached.

Council Members Sloan Scroggin and Holly Hertzberg have now presented to the City Council an ordinance that would repeal both ordinances and end the mask mandate in Fayetteville. I have attached the proposed ordinance to this memo. This ordinance will be walked on to the City Council Agenda Session on Tuesday.



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

Ordinance: 6465

File Number: 2021-0618

AN ORDINANCE TO REQUIRE PERSONS TO WEAR FACE MASKS IN PUBLIC SERVICE AREAS IN CITY OWNED BUILDINGS AND PLACES OF PUBLIC ACCOMMODATION SUBJECT TO REASONABLE EXEMPTIONS AND TO DECLARE AN EMERGENCY

WHEREAS, infections, hospitalizations and deaths of Fayetteville's unvaccinated residents are again surging because of the Delta Variant of the Covid-19 virus; and

WHEREAS, Governor Hutchinson has proclaimed a new declaration of disaster emergency because of the new pandemic of unvaccinated Arkansans; and

WHEREAS, the Pulaski County Circuit Court has issued an Order to temporarily enjoin enforcement of Act 1002 which had limited the State, counties, and cities from enforcing broad mask mandates for private places of public accommodation and school districts from protecting their students even during this increasing pandemic; and

WHEREAS, the most important duty of the City of Fayetteville is to protect the safety and preserve the health of its citizens, residents and visitors; and

WHEREAS, now that Act 1002 has been preliminarily enjoined by the Pulaski Circuit Court, Arkansas school boards and cities may again act to protect their citizens by enforcing face mask requirements now being recommended by the Center for Disease Control and Prevention and the Fayetteville Board of Health.

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 a renewed pandemic of the unvaccinated caused by the Delta Variant of Covid-19 is surging in

Fayetteville, threatening to overwhelm hospital resources and staff, and causing grievous infections, hospitalizations and deaths of even young and previously healthy unvaccinated persons.

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 persons within public service areas in all places of public accommodation including City buildings 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 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.
- E. Children of less than two years of age shall not be required to wear face masks.

Section 3: Sunset Clause. Upon the dissolution of the preliminary injunction or any succeeding permanent injunction against Act 1002, the termination of the Governor's current Proclamation of pandemic emergency, or the reduction of the hospitalizations and deaths of Fayetteville residents now being caused by the Delta Variant of Covid-19 drops below levels which the City Board of Health has determined should require masks of even vaccinated persons, this ordinance shall automatically terminate within 14 days unless the City Council passes an Ordinance to extend this Ordinance's effect.

Section 4: Penalty. Persons violating this ordinance's requirement to properly wear face masks pursuant to this ordinance's terms shall be subject to the penalties allowed in §10.99 **General Penalty** of the *Fayetteville Code*.

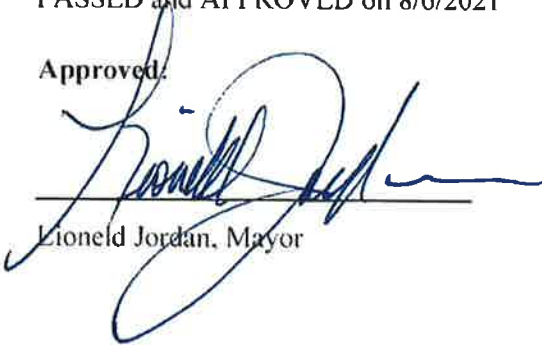
Section 5: Emergency Clause. That the City Council of the City of Fayetteville, Arkansas hereby determines that this ordinance should become effective without delay because widespread use of a face mask is necessary to prevent the more rapid spread of the Delta Variant of the Covid-19 virus, especially when unvaccinated persons gather in indoor areas. Therefore, for the public peace as well as the health and safety of Fayetteville residents, the City Council hereby declares an emergency exists such that this ordinance shall become effective immediately upon its passage and approval.

Ordinance: 6465

File Number: 2021-0618


PASSED and APPROVED on 8/6/2021

Approved:



Lioneld Jordan, Mayor

Attest:



Kara Paxton, City Clerk Treasurer





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

Ordinance: 6486

File Number: 2021-0793

AN ORDINANCE TO AMEND THE SUNSET CLAUSE OF ORDINANCE 6465 TO EXTEND THE MASK MANDATE

WHEREAS, in response the surge of unvaccinated persons requiring much increased hospitalization, intensive care and ventilators because of the Delta variant which was straining Fayetteville's hospital and medical resources, the City Council passed Ordinance 6465 on August 6th after Act 1002 of 2021, which had banned mask mandates, had been declared unconstitutional and been preliminarily enjoined: and

WHEREAS, the Arkansas Supreme Court recently refused to dissolve the preliminary injunction issued by the Circuit Court which therefore remains in full force and effect: and

WHEREAS, the City Council also acted upon the recommendation of the City Board of Health that masks should be required (even for the fully vaccinated) again in most indoor places of public accommodation until the pandemic surge of the unvaccinated substantially subsides; and

WHEREAS, Governor Hutchinson did not renew his July 29, 2021 Pandemic Emergency Proclamation which automatically expired at the end of September.

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 amends Section 3 Sunset Clause of Ordinance 6465 to extend the mask mandate's continuing effectiveness by removing the following: "the termination of the Governor's current Proclamation of pandemic emergency," and affirms the continuing need for the mask mandate to protect the health, safety, and welfare of our citizens at this time.

PASSED and APPROVED on 10/5/2021

Approved:


Lioneld Jordan, Mayor

Attest:


Kara Paxton, City Clerk Treasurer

