

ORDINANCE RECORD

No. 728—REDFIELD & COMPANY INC., OMAHA

ORDINANCE NO. 1402

AN ORDINANCE TO AMEND CHAPTER 92 OF THE LA VISTA MUNICIPAL CODE TO ADD SUBCHAPTER 92.30 ENTITLED "PREVENTION OF COVID-19"; TO PROVIDE LEGISLATIVE FINDINGS AND INTENT; TO REQUIRE FACE COVERINGS WHILE INDOORS WITHIN THE CITY, NOTICE OF SUCH REQUIREMENT, AND EXCEPTIONS; TO DECLARE PUBLIC NUISANCE AND PROVIDE FOR PENALTIES, ABATEMENT, SUNSET AND REQUIRED REPORTING; TO REPEAL CONFLICTING PROVISIONS; AND TO PROVIDE FOR SEVERABILITY, PUBLICATION AND EFFECTIVE DATE

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA, as follows:

I. As result of the Novel Coronavirus (COVID-19) pandemic, continued community transmission and increased number of confirmed COVID-19 cases within the City limits of the City of La Vista, and resulting dangers to the public health, safety, and welfare, an emergency exists within the City of La Vista requiring immediate action of the City as provided in this ordinance. This ordinance shall amend Chapter 92 of the La Vista Municipal Code to adopt rules and regulations for a non-pharmaceutical intervention to combat and halt the spread and progression of COVID-19.

II. Chapter 92 of the La Vista Municipal Code is hereby amended by adding subchapter 92.30 as follows:

"§92.30. — PREVENTION OF COVID-19

Sec. 92.30.1. — Legislative Findings and Intent.

- (1) The City Council hereby finds and declares, based upon the scientific and medical evidence before it, that:
 - (a) the Novel Coronavirus (COVID-19) has impacted and continues to dramatically impact the citizens of the City of La Vista, Nebraska; and
 - (b) exposure to COVID-19 presents a risk of death or serious long-term disability; the exposure is widespread and poses significant risk of harm, including death, to people in the general population of the City of La Vista; there is a particular subset of the population that is more vulnerable to the threat and thus at an increased risk; and the threat is from a novel infectious disease; and
 - (c) information from the World Health Organization, the United States Centers for Disease Control and Prevention (CDC), Nebraska Department of Health and Human Services, the Sarpy/Cass Health Department, local public health departments throughout Nebraska, and members of the Sarpy County and metropolitan area medical community indicate that citizens of the metropolitan area, including the City of La Vista, have been and will continue to be exposed due to community transmissions of COVID-19; and
 - (d) the manner in which the spread of COVID-19 cases in the City of La Vista has occurred creates an unacceptable risk to the health, safety, and welfare of the citizens of the City of La Vista; and
 - (e) the number of COVID-19 infections within the City of La Vista continues to increase; and
 - (f) COVID-19 constitutes a public nuisance and a threat to the health, safety, and welfare of the City of La Vista and its residents; and
 - (g) The Director of the CDC, the Director the Sarpy/Cass Health Department, doctors and infectious disease experts from the University of Nebraska Medical Center and Nebraska Medicine, as well as others in the medical profession, have concluded that the wearing of face coverings by every individual while in public, particularly while indoors, is one of the best methods to slow and stop the spread of COVID-19; and
 - (h) the wearing of face coverings by every individual while indoors in public places in the City of La Vista will reduce community transmissions of

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COVID-19, resulting in fewer deaths and serious health complications, and will ease the strain on hospitals and other medical offices and facilities; and

- (1) the wearing of face coverings by every individual while indoors in public places in the City of La Vista will increase the chances of keeping businesses open and operating, encouraging economic growth and preventing prolonged economic harm; and
- (j) it is just and proper for the City Council to exercise the authority granted to it by applicable law, including without limitation Neb. Rev. Stat. Sections 16-238, 16-240, 16-246, and 18-1720, in furtherance of protecting the public health, safety, and welfare.

Sec. 92.30.2. — Definitions.

For purposes of this subchapter, the following terms are defined as follows:

- (1) **Face Covering.** — A face covering is defined as a covering which, when worn properly, must cover the nose and mouth completely and can include a paper or disposable face mask, a cloth face mask, a scarf, a bandanna, a neck gaiter, or a religious face covering. Medical-grade masks and respirators are sufficient face coverings, but to preserve adequate supplies, their purchase and use is discouraged for those who do not work in a health care setting or in other occupations that require medical-grade personal protective equipment. Masks that incorporate a valve designed to facilitate easy exhaling, mesh masks, or masks with openings, holes, visible gaps in the design or material, or vents are not sufficient face coverings because they allow exhaled droplets to be released into the air.
- (2) **Premises That Is (or Are) Open to the General Public.** — Premises that is (or are) open to the general public means property upon or into which any members of the public are allowed to enter. The term is intended to be broadly defined to include without limitation real or personal property owned or operated by entities that employ or engage workers, including private-sector entities, public-sector entities, non-profit entities, regular commercial or business establishments, private clubs, religious centers or buildings, public transportation (including buses, taxis, ride-sharing vehicles, or vehicles used for business purposes), and any place which is generally open to any members of the public, including educational institutions and daycare facilities.
- (3) **Subchapter.** — **Subchapter means the** provisions set forth in sections 92.30.1 through 92.30.12.

Sec. 92.30.3. — individual Face Coverings Required.

All individuals age five (5) and older shall wear a face covering over their mouth and nose while indoors in a premises that is open to the general public including, but not limited to, educational institutions, unless the individual maintains a minimum of six (6) feet of separation or social distance at all times from anyone who is not a member of the individual's household, except face coverings will not be required if the individual:

- (1) is seeking federal, state, county, or city governmental services;
- (2) is seated at a bar or restaurant to eat or drink, or while immediately consuming food or beverages;
- (3) is engaged in an occupation preventing the wearing of a face covering;
- (4) is obtaining a service or purchasing goods or services that requires the temporary removal of the face covering;
- (5) is asked to remove a face covering to verify an identity for lawful purposes;
- (6) is providing a speech, lecture, or broadcast to an audience so long as six (6) feet of distancing from other individuals is maintained; or
- (7) cannot otherwise wear a face covering because of a medical condition, a mental health condition, or a disability that makes it unreasonable for the individual to wear a face covering.

Nothing in this section shall prohibit the owner or person in charge of a premises that is open to the general public, including without limitation the owner or person in charge of any federal, state, city, or other governmental facility, from requiring an individual to wear a face covering during any of the circumstances enumerated above or from implementing a more restrictive face covering policy.

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Sec. 92.30.4. — Premises That Are Open to the Public — Duty to Require Face Coverings.

Any individual or entity which maintains premises that are open to the general public including, but not limited to, educational institutions, shall require all individuals age five (5) and older to wear a face covering over their mouth and nose while indoors in said premises, unless the individual maintains a minimum of six (6) feet of separation or social distance at all times from anyone who is not a member of the individual's household, except face coverings will not be required if the individual:

- (1) is seeking federal, state, county, or city governmental services;
- (2) is seated at a bar or restaurant to eat or drink, or while immediately consuming food or beverages;
- (3) is engaged in an occupation preventing the wearing of a face covering;
- (4) is obtaining a service or purchasing goods or services that requires the temporary removal of the face covering;
- (5) is asked to remove a face covering to verify an identity for lawful purposes;
- (6) is providing a speech, lecture, or broadcast to an audience so long as six (6) feet of distancing from other individuals is maintained; or
- (7) cannot otherwise wear a face covering because of a medical condition, a mental health condition, or a disability that makes it unreasonable for the individual to wear a face covering.

Nothing in this section shall prohibit the owner or person in charge of a premises that is open to the general public, including without limitation the owner or person in charge of any federal, state, city, or other governmental facility, from requiring an individual to wear a face covering during any of the circumstances enumerated above or from implementing a more restrictive face covering policy.

Sec. 92.30.5. — Notice of Face Covering Requirements.

Any individual or entity which maintains premises that are open to the general public, including but not limited to educational institutions, must post one or more signs that are visible to all persons — including workers, customers, and visitors — instructing them to wear face coverings as required by this subchapter. The signs required by this section must be printed on a poster or paper that is a minimum size of 8.5 inches by 11 inches, and be written or typed in a legible font or typeface that is no smaller than 12 points of leading or 12-point type.

Sec. 92.30.6. — Exceptions.

The provisions of this subchapter shall not apply to:

- (1) Courts of law; public utilities or federal, state, county, or city operations; medical providers, facilities, or pharmacies; congregate living centers or facilities; group homes and residential drug and/or mental health treatment facilities; shelters; airport travel; election offices; polling places on an election day; or to residential dwelling units.
- (2) Children under the age of five (5). While children ages three (3) and four (4) may wear a face covering if that child can remove the face covering without assistance, guidance from the CDC states that children two (2) years old and under should never wear a face covering due to the risk of suffocation.
- (3) Federal and state activities. Nothing in this subchapter shall be construed to limit, prohibit, or restrict in any way the operations of the federal or state government or the movement of federal or state officials in the City while acting in their official capacity, including federal and state judicial, legislative, and executive staff and personnel.
- (4) Individuals at their workplace when wearing a face covering would create a job hazard for the individual or others, as determined by federal, state, or local regulators or workplace safety and health standards and guidelines.
- (5) Individuals who are alone in an office, room, a vehicle, the cab of heavy equipment or machinery, or an enclosed work area. In such situations, the individual should still carry a face covering to be prepared for person-to-person interactions and to be used when the individual is no longer alone.

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- (6) Individuals who are seated at a desk or standing at a stationary work station, provided that the desk or work station has a solid Plexiglas or plastic barrier installed upon it which cannot be moved.
- (7) Individuals who are officiating at a religious service.
- (8) Individuals communicating with other individuals who are deaf or hard of hearing or who have a disability, medical condition, or mental health condition that makes communication with that individual while wearing a face covering difficult, provided that minimum social distancing of six (6) feet or more is maintained to the extent possible between persons who are not members of the same household.
- (9) Individuals who are engaged in activities, such as swimming or showering, where the face covering will get wet.
- (10) Individuals who are exercising in an indoor business or indoor space such as a gym or fitness center, while the level of exertion makes it difficult to wear a face covering, provided that minimum social distancing of six (6) feet or more is maintained at all times.
- (11) Individuals in an indoor premises that is generally open to the public while playing a musical instrument that cannot be played when a face covering is worn, provided that a minimum social distancing of six (6) feet or more is maintained at all times.
- (12) Individuals actively participating in a team sports activity, while the level of exertion makes it difficult to wear a face covering.
- (13) Public safety workers actively engaged in a public safety role, including but not limited to law enforcement personnel, fire fighters, or emergency medical personnel, in situations where wearing a face covering would seriously interfere in the performance of the individual's public safety responsibilities.

Nothing in this section shall prohibit the owner or person in charge of a premises that is open to the general public, including without limitation the owner or person in charge of any federal, state, city, or other governmental facility, from requiring an individual to wear a face covering during any of the circumstances enumerated above or from implementing a more restrictive face covering policy.

Sec. 92.30.7. — Public Nuisance Declared.

Any individual or entity which maintains premises that are open to the general public who fails to comply with the requirements of section 92.30.4, above, is hereby declared to be a nuisance and a danger to the public health, safety, and welfare.

Sec. 92.30.8. — Application.

The provisions of this subchapter shall only apply to all persons and property within the corporate limits of the City of La Vista and shall not extend into the extraterritorial jurisdiction of the City.

Sec. 92.30.9. — Penalty.

Any individual or person who is found to have violated any of the provisions of this subchapter shall be guilty of an infraction as defined in Neb. Rev. Stat. Section 29-436 and shall be subjected to the fines set forth in such Section 29-436; provided, however, the fine for an initial offense shall be \$25.00. Each instance of violation of this subchapter may be considered a separate offense.

Sec. 92.30.10. — Civil Abatement.

In addition to any other penalty sought or obtained under this subchapter or other applicable law, the City Attorney, upon direction of the Mayor or City Administrator, may institute injunctive or other appropriate civil proceedings necessary to obtain compliance with this subchapter or to abate any nuisance resulting from violations of this subchapter.

Sec. 92.30.11. — Sunset Provision.

The requirements imposed by this subchapter shall expire and terminate at 11:59 p.m. on February 23, 2021, unless otherwise extended by ordinance of the City Council.

92.30.12. — Report Required.

The City Administrator of the City of La Vista, or any designee of the City Administrator, while the provisions of this subchapter remain in effect, periodically shall prepare a report or update to be delivered to the Mayor and the City Council.

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The report or update shall contain information from the prior report or update on the status of COVID-19 infections in the City of La Vista and such additional information as the Mayor or City Council shall specify, which may include, for example, information on the current number of cases in the City, the number of new cases diagnosed, the number of tests performed, the positivity rate of those tests, the number of new deaths that have occurred, the metropolitan area hospital occupancy rate, the ventilator utilization rate, the COVID-19 hospitalization rate, a breakdown of cases by zip code, and any such other information that the City Administrator, such designee, Mayor or City Council deems relevant to the spread of COVID-19 within the City of La Vista."

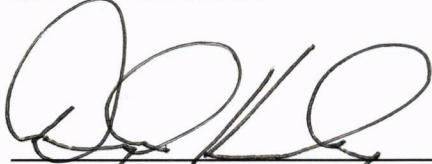
III. Repeal of Conflicting Provisions. Any and all Ordinances or portions thereof, which are in conflict herewith are hereby repealed.

IV. Severability. The sections, subsections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable, and if any section, subsection, paragraph, sentence, clause, or phrase of this Ordinance, for any reason, shall be declared invalid, unenforceable, or unconstitutional by the valid judgment or decree of a court of competent jurisdiction, such invalidity, unenforceability, or unconstitutionality shall not affect any of the remaining sections, subsections, paragraphs, sentences, clauses, or phrases of this Ordinance. The Mayor and City Council of the City of La Vista hereby declare that it would have passed this Ordinance and each section, subsection, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, paragraphs, sentences, clauses or phrases be declared unconstitutional or invalid.

V. Publication and Effective Date. This Ordinance shall be published and in force and effect in accordance with applicable law; provided, however, this Ordinance shall constitute an emergency ordinance and take effect upon the proclamation of the Mayor immediately upon its first publication if passed by an affirmative three-fourths vote of the City Council.

PASSED AND APPROVED THIS 24TH DAY OF NOVEMBER, 2020

CITY OF LA VISTA



Douglas Kindig, Mayor

ATTEST



Pamela A. Bueth, CMC
City Clerk