

**Kearney, Nebraska**  
**November 17, 2020**  
**5:30 p.m.**

A special meeting of the City Council of Kearney, Nebraska, was convened in open and public session at 5:30 p.m. on November 17, 2020 in the Council Chambers at City Hall. Present were: Stanley A. Clouse, President of the Council; Lauren Brandt, City Clerk; Council Members Randy Buschkoetter, Bruce Lear, Tami James Moore and Jonathan Nikkila. Absent: None. Michael Morgan, City Manager; Michael Tye, City Attorney; Eric Hellriegel, Assistant City Manager; Bryan Waugh, Chief of Police and Dr. Robert Messbarger, City Physician were also present. Members of the media were present also.

Notice of the meeting was given in advance thereof by publication in the Kearney Hub, the designated method for giving notice, a copy of the proof of publication being attached to these minutes. Advance notice of the meeting was also given to the City Council and a copy of their acknowledgment or receipt of such notice is attached to these minutes. Availability of the Agenda was communicated in the advance notice and in the notice to the Mayor and City Council. All proceedings hereafter shown were taken while the meeting was open to the attendance of the public.

## **I. ROUTINE BUSINESS**

### **ANNOUNCEMENT**

Mayor Clouse announced that in accordance with Section 84-1412 of the Nebraska Revised Statutes, a current copy of the Open Meetings Act is available for review and is posted on the wall of the Council Chambers.

### **CONSIDER THE IMMEDIATE ISSUANCE OF AN EMERGENCY ORDINANCE TO REQUIRE INDIVIDUALS TO WEAR FACIAL COVERINGS IN THE CITY OF KEARNEY, PROVIDE EXCEPTIONS THEREOF, PROVIDE FOR THE ENFORCEMENT FOR VIOLATIONS, AND TO ESTABLISH A SUNSET PROVISION**

Mayor Clouse opened the public hearing for consideration of the immediate issuance of an emergency ordinance to require individuals to wear facial coverings in the City of Kearney, provide exceptions thereof, provide for the enforcement for violations, and to establish a sunset provision and adopt Emergency Ordinance No. 8457.

Mayor Clouse noted that any correspondence received by the City Clerk's office or sent to the City Council or himself had been received and read; overall, there were over 175 emails, letters or messages received on this matter. Mayor Clouse acknowledged that all communication received were part of the City Council's review and research of this matter.

Michael Tye, City Attorney, stated at the November 10, 2020 City Council meeting a report was provided to City Council from the CEO's of Kearney's two (2) hospitals as well as from the City Physician regarding the status of COVID in the community. As a result of their presentation, City Council recommended referring the matter to the City Health Board for their consideration and to make recommendation back to City Council; the City Health Board public meeting occurred today at 4:30 p.m. The City Board of Health reviewed the Ordinance and voted unanimously to recommend approval of the Ordinance by the Kearney City Council.

Mr. Tye stated Nebraska Revised Statutes 16-238; 16-240 and 16-246 all grant First Class Cities such as Kearney, authority to act in this area. More specifically, Nebraska Revised Statute 16-238 states in part, that a City of First Class can make regulations to prevent the introduction and spread of contagious, infectious and malignant diseases in to the City; there is further authority to deal with nuisances and abatement of those nuisances and to deal with public health. The Ordinance generally requires anyone over the age of five (5) years old to wear a facial covering or mask when they are indoors in areas that are open to the general public and when it is not possible to maintain 6-foot social distancing. Mr. Tye expanded on the number of exceptions to the Ordinance and specified that the Ordinance does not close any businesses or restrict hours of any business; however, businesses will be required to post signage notifying citizens of the Ordinance. The signage will be provided by the City of Kearney. A violation of the Ordinance will be considered an infraction and carries a \$25 fine; a provision to allow the City Attorney to seek injunctive relief to abate a nuisance is also included in the Ordinance. The Ordinance is temporary and will sunset on February 23, 2021; however, Council can extend or rescind the Ordinance if the situation were to change, the City Physician will provide a monthly report to City Council to assist in keeping Council current on any changes. Because the Ordinance has been deemed an Emergency Ordinance it will become effective three (3) days after its passage, unless Council chooses to do otherwise.

Council Member Nikkila questioned why the February date was chosen as the sunset date instead of tying it to hospital numbers or the change in conditions? Mr. Tye stated the challenge was defining what the appropriate measure is to remove the mandate and reiterated the requirement of the monthly report from the City Physician giving Council a chance to evaluate the situation each month. February 23, 2021 coincides with other cities sunset dates as well as the hope of not having to do extensions to it.

Council Member Nikkila questioned how this Ordinance adds to what is currently being done? Mr. Tye stated the Ordinance creates a requirement for wearing a mask across the board and also requires all businesses to post signage notifying the public to wear masks in their business; it is a broader approach to what is currently being done in the community and is also broader than the current Directed Health Measures (DHM's) that are in place.

Bryan Waugh, Chief of Police, stated enforcement of this issue is not any different than enforcing the issuance of DHM's from the Nebraska Department of Health and Human Services. Chief Waugh stated the Kearney Police Department (KPD) is realistic and understands there is a balance between physical safety and liberties citizens enjoy; however, based on the recommendations from the medical community the Ordinance is something that is needed. KPD is hoping for voluntary compliance from the community and does not view the issue as an enforcement issue but rather a prevention and deterrent issue. Chief Waugh believes this is a way to come together as a community for the public safety and health of our entire community. He along with all of the KPD Officers, expectations will be to work with individuals in the community and businesses. Calls received regarding individuals not wearing a mask, or businesses not requiring masks, will involve the Officer educating the individual or business on what is needed to comply with the Ordinance. Chief Waugh noted the mandate is not something KPD Officers will be looking for due to the numerous other policing issues Officers will be dealing with; however, they will still be addressed as needed as it is an important issue for the safety and continued health of the community.

Council Member Buschkoetter stated he received a message from a citizen who has problems wearing a mask fulltime, so sometimes they step away from everyone and remove their mask to get a breath of fresh air, how would Officers handle this situation if they were

called? Chief Waugh stated the Ordinance addresses issues pertaining to someone having a medical condition, a mental health condition or a disability that would make it unreasonable for the individual to wear a mask. Officers would work with each individual or business to figure out what the best resolution would be for each situation.

Mr. Tye additionally noted the individual would also be okay if they were to social distance themselves and then remove their mask.

Council Member Nikkila questioned if the burden of proof will be up to each individual to provide proof they need an exemption? Chief Waugh stated KPD will take citizens at their word.

Dr. Messbarger stated current numbers in the State of Nebraska are 118 per 100,000; Buffalo County is at 131 per 100,000 and Lancaster County, who have a mask mandate, are at 78 per 100,000. Dr. Messbarger stated there are numerous opinions regarding the wearing of masks; however, the CDC's most recent findings show the primary transmission of this virus is in droplets and those droplets are maintained in a mask for the most part. Masks assist with the volume of the virus that someone gets exposed to; therefore, the primary reason for the mask is to help the person wearing the mask not infect someone else. He further stated masks are not perfect but are an important when combined with social distancing, following the 3 C's (avoid crowded places, close contact and confined spaces), avoiding large gatherings and smaller gatherings in homes with people outside of a person/family's normal bubble.

Council Member Nikkila questioned what the local hospitals are seeing in terms of numbers of COVID patients. Dr. Messbarger stated the biggest issue hospitals are currently dealing with are staffing shortages. Council Member Nikkila questioned if hospitals are full? Dr. Messbarger stated hospitals are full and noted UNMC has 15 floors of COVID patients.

Mayor Clouse asked Dr. Messbarger if the Ordinance would save lives if passed? Dr. Messbarger feels it would help save lives and noted as more communities start having mask mandates it will assist in lowering the number of people contracting the disease; however, Dr. Messbarger feels a Statewide mandate would be most effective.

Council Member Nikkila asked Dr. Messbarger how to correctly wear a mask? Dr. Messbarger referenced the CDC website which shows how to wear masks correctly; however, simply speaking, just make sure the nose and mouth are covered. He noted people touching their own masks and adjusting them is not an issue; however, there is an issue if someone works with the public and consistently touches their mask and then touches items to be given or served to the public. The business would need to address that issue.

Mayor Clouse opened the Public Hearing.

The following person(s) appeared and spoke:

**PROPONENTS:**

Jaden Longfellow, Kearney

Kristen McLean, Kearney

Susan Puckett, Kearney

Chris Fankhauser, Kearney

Bill Calhoun, Kearney

Christina Ballard, read by City Clerk (Exhibit #1 – see attached)

**OPPONENTS:**

Kirby Wilson, Kearney  
Lisa May, Kearney  
Brandon Cone, Kearney  
Amy Wilson, Kearney  
Trevor Brown, Kearney  
Riley Cross, Kearney  
Jacob Reiter, Kearney  
Tracy Hock, Kearney  
Caryn Lind, Kearney  
Angie Hock, Kearney  
Gerald Lambert, Kearney  
Kelly Larson, Kearney  
Terry Journey, Kearney  
Jimmy Pena, Kearney  
Mercadies Damratowski, Kearney  
Janice VanWinkle, Kearney  
Natasta Gull, Omaha  
Whitney Rivera, Kearney  
Elliott Rivera, Kearney

Council Member Nikkila asked Mr. Tye to discuss the impact this Ordinance would have in a church setting. Mr. Tye stated in a church setting either social distancing or the wearing of a mask would be required; the Officiant is exempt and would not be required to wear a mask.

Mayor Clouse pointed out Council and Chief Waugh are not trying to close churches and further feels there is a responsibility for public health that supersedes what each individuals' political views are; the community needs to work together to defeat this public health issue.

Council Member Nikkila noted the divisiveness in the community and commented on how unfortunate it is but despite how Council votes, individuals still need to be respectful and realize people have differing views because we are a democratic society.

Council Member Moore stated a major concern for her is the mortality rate. There is a .8% mortality rate when it comes to confirmed cases and deaths in Nebraska; that equals 272 deaths in Kearney alone, if Kearney did nothing. Additionally, she stated this Ordinance is not forcing anyone to wear a mask, it is a personal decision on whether an individual chooses to put themselves in a place where a mask has to be worn, the Ordinance is leaving choices for citizens if it is passed. Council Member Moore stated Council has received support for the Ordinance from UNK, Kearney Public Schools and medical centers/hospitals.

Council Member Lear stated he does not have the ability to judge the mask studies and deem them correct or incorrect; however, two (2) local hospitals and an independent physician are stating there is a significant problem. Council Member Lear stated he has his own views but also deeply respects the rights of others to hold their own views; however, at every turn the decision keeps coming back to the medical professionals' opinions that were provided to Council; these are the guiding tenants upon which he intends to vote for the Ordinance.

Council Member Buschkoetter encourages citizens to maintain civility. He questioned if it is really an infringement on citizens' Constitutional rights as the Constitution empowers States to deal with the issues of health and safety, not the federal government. Within each State are municipal governments, county and local, that can regulate issues locally to fit each individual community, like the Ordinance being voted on today. He also noted that along with local hospitals and doctors, the Nebraska Department of Health and Human Services, the CDC and the World Health Organization have also universally accepted masks as the best course of action people can take to try and mitigate the expansion of the disease. Council Member Buschkoetter sees the current situation as what our country can do in the name of patriotism, and noted, in the 1940's when the country was concerned about frontline people who were fighting in the war, Americans rationed items, inconvenienced themselves and made sacrifices so those that were on the frontlines would have what they needed; right now, our frontline people need this Ordinance. He stated it is the right thing to do.

Council Member Nikkila noted there has not been a spread in schools, but it is happening outside of schools which is affecting teachers and other school personnel; the community not only needs to be aware of the medical community but also teachers and schools so that kids can stay in school. He feels that hospitals are the trigger in this situation and stated Council has not rushed into any decisions as issues with personal freedoms are not taken lightly. There are wait lists at hospitals and people cannot get in, people are having to wait in ambulances or being sent to other hospitals, it is impacting everyone, even those who don't have COVID. He feels if there is a way margins can be reduced, even by a small amount, it will be helpful for hospitals so all patients can be cared for. Additionally, Council Member Nikkila stated he visited with several church pastors and thinks part of the implementation of the Ordinance is educating people that this is happening and noted he received a suggestion to move the implementation date to Monday, November 23, 2020 to allow churches time to communicate and educate their congregation; he feels this is a reasonable request.

There was some discussion between Council Members and Mr. Tye regarding options on the choices Council has on how to delay the date of implementation if they chose to do so.

Council Member Moore asked Dr. Messbarger how much of an impact delaying the implementation of the mandate would have on COVID numbers? Dr. Messbarger stated that is a difficult question to answer; however, he feels waiting will most likely not have a major impact. He stated the challenge for churches lies with changing their system and educating their parishioners.

Moved by Clouse to close the public hearing for consideration of the immediate issuance of an emergency ordinance to require individuals to wear facial coverings in the City of Kearney, provide exceptions thereof, provide for the enforcement for violations, and to establish a sunset provision and introduced Emergency Ordinance No. 8457 to become effective at 12:01 a.m., Monday, November 23, 2020 and moved that the statutory rules requiring ordinances to be read by title on three different days be suspended and said ordinances be considered for passage on the same day upon reading by number only, and then placed on final passage and that the City Clerk be permitted to call out the number of the ordinance on its first reading and then upon its final passage. Council Member Nikkila seconded the motion to close the hearing and suspend the rules for Emergency Ordinance No. 8457. President of the Council asked for discussion or if anyone in the audience was interested in the emergency ordinance. No one responded. Clerk called the roll which resulted as follows: Aye: Clouse, Lear, Nikkila, Moore, Buschkoetter. Nay: None. Motion to suspend the rules having been concurred in by three-fourths of the City Council, said motion was declared passed and adopted. City Clerk

read Emergency Ordinance No. 8457 by number. Roll call of those in favor of the passage of said emergency ordinance on the first reading resulted as follows: Aye: Clouse, Lear, Nikkila, Moore, Buschkoetter. Nay: None. Motion carried. Ordinance was read by number.

Moved by Nikkila seconded by Moore that Emergency Ordinance No. 8457 be passed, approved and published as required by law. Roll call resulted as follows: Aye: Clouse, Nikkila, Moore, Buschkoetter, Lear. Nay: None. Motion carried.

By reason of the roll call voted on the first reading and final passage of the emergency ordinance, Emergency Ordinance No. 8457 is declared to be lawfully passed and adopted upon publication in pamphlet form and made available to the public at the Office of the City Clerk, the Kearney Police Department and the Kearney Public Library.

**VIII. ADJOURN**

Moved by Clouse seconded by Nikkila that Council adjourn at 7:53 p.m. Roll call resulted as follows: Aye: Clouse, Buschkoetter, Lear, Nikkila, Moore. Nay: None. Motion carried.

**ATTEST:**

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**STANLEY A. CLOUSE  
PRESIDENT OF THE COUNCIL  
AND EX-OFFICIO MAYOR**

\_\_\_\_\_  
**LAUREN BRANDT  
CITY CLERK**

# Exhibit #1

**Lauren Brandt**

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**From:** Christina M. Ballard <cmballard23@gmail.com>  
**Sent:** Tuesday, November 17, 2020 1:56 PM  
**To:** Lauren Brandt  
**Subject:** [External] Citizen statement to be read into record at 11/17 City Council Meeting

Good evening Mayor & City Council Members. As a city of Kearney resident, I would like to share my thoughts on the Emergency Ordinance regarding a mask mandate.

It is a shame that I do not feel safe enough to speak to you in person. It is also a shame that this issue has been so politicized and divisive. From the outset of the COVID-19 pandemic we have been deluged by mis and dis-information and divisions along political ideologies.

As Council Member Lear commented in an email, you have received advice from health professionals and you know that masks are not 100% effective, but masks "can prevent a truly significant number of transmissions and we need to slow down the rate at which people are becoming sick because we are losing our ability to care for them." This is echoed by institutions such as Johns Hopkins University, the Mayo Clinic, the National Institutes of Health and the Centers for Disease Control.

It is a fact that masks are effective at reducing transmission, it is a fact that masks do not cause any harm to the wearer, many workers must wear them daily. It is a fact that Nebraska's per capita rate of infection is ranked fifth highest out of US States, yet there are 38 more populous states. Why is this? Nebraskans have been fooled into thinking there is a danger in mask-wearing and that it somehow limits their freedom.

As a citizen it is my duty to protect myself and others from any harm I may do intentionally or not. We wear seatbelts, we refrain from driving after drinking alcohol even if we do not feel drunk, why can we not take it upon ourselves to wear a mask to protect ourselves and others? We may be infected and not feel sick and pass it on.

I whole-heartedly wish that my fellow Nebraskans could see this and take the proper steps to protect themselves and others. Unfortunately, you are now left in the unenviable position of being forced to address the issue.

Please help us make this slow down, please make leaving home safer for all of us, please pass this emergency ordinance.

Thank you.

Christina Ballard  
820 W56th Street Apt 22  
Kearney, NE 68845

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**Christina M. Ballard**  
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