



City of Keene
New Hampshire

**PLANNING, LICENSES AND
DEVELOPMENT COMMITTEE
AGENDA
Council Chambers A
July 29, 2020
6:00 PM**

Kate M. Bosley, Chair
Mitchell H. Greenwald, Vice Chair
Philip M. Jones
Gladys Johnsen
Catherine Workman

1. Relating to the Wearing of Face Coverings
Ordinance O-2020-09-A

MORE TIME ITEMS:

- A. Relating to Social Service and Congregate Care Uses and License
Ordinance O-2019-13
Ordinance O-2019-14
- B. Tad Schrantz/The Colonial Theatre Group – Various Licenses Needed for the Renovation and Addition to the Colonial Theatre
- C. Darren Humphrey/Trax Club – Request to Use City Property – Railroad Square and Use of Railroad Square - Parks, Recreation, and Facilities Director
- D. Let it Shine – Request for Use of City Property – Pumpkin Festival

Non Public Session
Adjournment

Due to the COVID-2019 State of Emergency, the Planning, Licenses and Development Committee will be holding its meeting remotely using the web-based program, Zoom. Members of the public will be able to access this public meeting through a variety of options, described below. If you encounter any issues accessing this meeting, please call 603-757-0622 during the meeting. To access the meeting online navigate to Zoom.us and enter the Webinar ID # 830 7266 4763. To Meeting ID: 830 7266 4763. When the meeting is open for public comment, callers may press *9 if interested in commenting or asking questions.



CITY OF KEENE

Ordinance O-2020-09-A

Twenty

In the Year of Our Lord Two Thousand and

Relating to the Wearing of Face Coverings

AN ORDINANCE

Be it ordained by the City Council of the City of Keene, as follows:

That the City Code of the City of Keene, New Hampshire, as amended, is hereby further amended by adding a new Article VIII, "Wearing of Face Coverings," to Chapter 66, entitled "PUBLIC CONDUCT" as follows:

Section 66-170. Statement and Intent.

- a) COVID-19 has been determined to be a virulent infectious disease threatening the public health and welfare of the country, and including residents in the City of Keene; and
- b) Infectious diseases such as COVID-19 are caused by germs, such as viruses, bacteria, and parasites; and
- c) Some diseases, including COVID-19, are transmitted from person to person very easily through respiratory droplets produced by sneezing and talking; and
- d) Public Health Officials have determined that it is possible for an infected individual to transmit certain diseases without exhibiting any symptoms; and
- e) The best means of slowing the spread of a virus is through minimizing close personal contact with individuals in a public environment, social distancing, covering the mouth and nose by wearing a **proper** face covering **in a proper manner**, and proper hand washing; and
- f) For optimal protection, the safe use of face coverings also requires the wearer to maintain proper hand hygiene by frequently handwashing with soap and water or hand sanitizer for at least twenty (20) seconds; and
- g) The wearer of the face covering can prevent the spread of disease by not touching the face, nose, or eyes with unwashed hands, not touching the outside of the face covering, and by keeping a distance of at least six (6) feet between from others; and
- h) The City Council for the City of Keene desires to minimize the threat to public health posed by the spread of communicable disease such as COVID-19 within the community.

Section 66-171. ~~Recommendations~~Requirements.

- a) Employees of businesses, **while performing their duties**, are ~~encouraged~~ **required** to wear a face ~~covering over~~ **covering completely covering** their mouth and nose **at all times** when interacting with the public, and ~~whenever they are within six (6) feet of a co-worker or a customer~~ **unless a barrier approved by the City Health Official provides sufficient separation.**
- b) Members of the public entering any business **for any purpose**, including any outdoor area where business is conducted, ~~work site, or government building, are encouraged~~ **are required** to wear a face covering, such as a fabric mask, ~~scarf, or bandana over~~ **completely covering** their nose and mouth **while conducting their business; provided however, that members of the public shall not be required to wear a face covering while actually seated at a restaurant table.**
- ~~e) Members of the public entering a restaurant for the purpose of picking up food for take-out or any other purpose are encouraged to wear a face covering over their mouth and nose.~~
- c) Residents, visitors, and members of the public entering or present ~~at~~**within** a ~~commercial building~~ **residential apartment** complex of ~~greater than~~ **containing** ~~two~~ **three or more residential (2)** units are ~~encouraged~~ **required** to wear a face covering over their nose and mouth while in **the interior** common areas, **including but not limited to foyers, stairwells and elevators (“Common Areas”)** **unless social distancing of six (6) feet can be maintained. This requirement shall also apply to any business having such Common Areas, notwithstanding the number of business units within the business complex.**
- d) As used herein, “business” is defined as any place, premises, or location **within a premises (“Premises”), operated either for profit or not for profit, which is generally open to, or accessible to the public, and into which the public is invited for the purpose of conducting any business customarily provided to the public by the business, including but not limited to retail stores, restaurants, banks, fitness centers, personal care facilities, food banks, grocery stores, thrift stores, theaters, City of Keene public facilities, and public conveyances licensed by the City of Keene; provided, however, that “business” shall not include any home occupation or business located ancillary to, or entirely within a private residence.**
- e) As used herein “face covering” means a covering made of cloth, fabric, **paper** or other soft or permeable materials, without holes, **mesh, or exhaust valves**, that covers ~~only~~ **the nose, mouth, and surrounding areas of the lower face.** A face covering may be factory made or homemade and improvised from ordinary household materials. **The face covering shall be worn in a manner to completely and continuously cover the mouth and the nose of the wearer when required to be worn. Provided, however, that this provision shall not supersede any**

Personal Protective Requirements that may otherwise apply to employees in any employment context, including, but not limited to health care workers, emergency service personnel, public works employees, construction employees, and hazard mitigation employees.

- f) ~~Notwithstanding the above, e~~Children under ten (10) years of age are not generally encouraged ~~required~~ to wear a face covering, although parents should make their own judgment on such use. ~~A face covering is not recommended for children two (2) years of age or less.~~
- g) A face covering is ~~also not encouraged~~ **required** for any person **with a medical or developmental condition to whom the wearing of a face covering would pose a threat to their health or safety. The individual shall not be required to produce documentation or other evidence to verify the condition.** ~~who has been advised that wearing a face covering may pose a risk to the person for health-related reasons.~~
- h) **Businesses shall implement adequate measures to notify their employees and the public of the requirements stated by this Ordinance. Such measures may include, but are not limited to the implementation of internal policies and procedures applicable to employees, and the prominent posting of signage both interior and exterior to any Premises subject to this Ordinance that the wearing of a face covering within the Premises is required. Businesses shall deny entry and/or services to any person who declines to wear a face covering after being requested to do so.**
- i) **Notwithstanding any provision of the City Code to the contrary, the penalty under this Ordinance for any member of the public who declines to wear a face covering as required by this Ordinance, after being requested to do so, shall be limited to the denial of entry to, and/or services provided, by the business; provided, however, that any business that violates the requirements of this Ordinance shall be given a verbal warning for a first offense; a written warning for a second offense; a fine of \$100 for any third offense; and a fine of \$250 for any fourth or subsequent offense.**
- j) **Except as otherwise required herein, this Ordinance shall not be interpreted to supersede, alter, revise or amend any requirement, business operation guidance, or recommendations with respect to the public, applicable to any specific business under any Executive Order or guidance issued by the Governor of the State of New Hampshire, or required by any other federal, state, or local government authority having jurisdiction over the business.**
- k) **This Ordinance shall not preclude any business from having requirements to entry, or for the provision of services, related to the COVID-19 State of Emergency that are more restrictive than as stated herein.**

- l) **This Ordinance shall automatically and immediately terminate, without the necessity of further action by the City Council for the City of Keene, upon the termination of the COVID-19 State of Emergency by the Governor of the State of New Hampshire.**

- m) Businesses owners in the City of Keene are **also** encouraged to take the #KeeneSafe business pledge to follow the New Hampshire and federal CDC guidelines to prevent and slow the spread of COVID-19. Information about the Keene Safe Pledge may be obtained at www.keenesafe.com.

George S. Hinsel, Mayor

Patty Little

From: Elizabeth A. Dragon
Sent: Tuesday, July 28, 2020 11:11 AM
To: City Councilors
Cc: Elizabeth Fox
Subject: Face coverings ordinance-Challenges to Enforcement
Attachments: SKM_C55820072715460.pdf

Mayor & Council-

I am out of the office on a previously scheduled vacation beginning this afternoon .Beth Fox will be covering for me. I am back in the office Monday.

PLD has called a special meeting this Wednesday to continue the conversation around the proposed ordinance requiring face coverings.

In an attempt to be as prepared as possible, I requested Chief Russo to consider the question of enforcement by his department.

Please see the attached memo. If charged with the responsibility of enforcement, the police department will serve you and the community well. However, voluntary compliance with an increased awareness campaign is recommended by the Chief.

Chief Russo will be attending Wednesday's meeting.

We have had great success with our Keene Safe Pledge.

This program provides an opportunity for Keene business owners to voluntarily pledge their commitment to help reduce transmission of COVID-19 among employees and customers by implementing and maintaining health and safety protocols. The Keene Safe pledge includes more than face coverings.

The pledge includes:

- Requiring employees and encouraging customers to wear face coverings in public settings where social distancing measures are difficult to maintain.

- Configuring public spaces for social distancing consistent with CDC guidelines.

- Placing alcohol-based hand sanitizer in frequently visited locations for both employees and customers.

- Implementing workplace cleaning and disinfection practices that follow CDC guidelines including regular sanitation of high-touch surfaces.

- Not allowing employees with COVID-19 symptoms to work on-site.

- Following current State of NH COVID-19 Reopening Guidelines.

Many businesses (136 to date) have voluntarily signed up and proudly display the Keene Safe logo in their window.

Recently, KSC has offered staff to team up with our Downtown Coordinator (Beth Wood) to personally visit downtown businesses. This will be a coordinated effort to encourage more businesses to take the pledge and to comply with state opening guidelines.

Last week the PLD committee listened to 3 hours of comments from the public. The majority of the comments were opposed to an ordinance mandating face coverings. This is, of course, only one representation of a moment in time. Wearing a mask to keep our community healthy and our businesses open is vitally important. Unfortunately, what is clear both from the PLD meeting comments and from news media all over the United States - is that emotions are running high on both sides of the issue. Enforcement will be difficult and there will be great potential for conflict-whether it be a business employee stopping someone at the door, a city employee refusing to provide entry/service to a resident who is refusing to wear a mask, or a police officer responding to a business who has a customer that is refusing to comply.

In the end, if you decide to focus primarily on education & voluntary compliance, I do believe we can do a great deal more marketing & outreach to get businesses on board.

I am including a couple links from an effort in Cambridge Mass utilizing volunteers.

<http://wcvb.com/article/cambridge-massachusetts-forming-community-corps-to-promote-covid-19-safety-tips/33397698?src=app>

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I will have access to my emails and my phone should you have any other questions for me.

Elizabeth A. Dragon, ICMA-CM

Keene City Manager

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 click on hyperlink to follow me on twitter

Police Department
City of Keene, New Hampshire

Date: July 24, 2020
To: Elizabeth Dragon, City Manager
From: Steven Russo, Police Chief
Subject: Face Coverings Ordinance – Challenges to Enforcement

Implementation of any new Ordinance normally carries a 31-day grace period for violations of that Ordinance. This Officer discretion to issue a warning is part of the Keene Police Department's policy and provides an opportunity to educate citizens and visitors about a new Ordinance such as a new stop sign, etc. This supports our preference of voluntary compliance.

A City Ordinance requiring face coverings will be controversial with the public and voluntary compliance, not strict enforcement, will be key to the success of such an Ordinance. Combined with this is the compliance already gained from businesses, and most customers that are conforming to State mandated reopening guidelines for each business type.

Enforcement by the Police Department, or any City Department, of such an Ordinance can and most likely will bring a measure of public discontent, one that at times may turn non-productive. Given public sentiment on both sides of the face coverings issue, any enforcement, especially strict enforcement, may very well lead to undesirable consequences and public perceptions embracing a lack of public trust.

Other challenges that will also be faced in enforcement include public versus private property, and open spaces in both realms. There is also the question as to which is the proper Department within the City to respond to complaints in businesses, Health or Police, as a violation in a particular business could also violate the State reopening guidelines, which normally falls to a health Officer to monitor. Also included are the challenges medical and religious waivers bring, and that are literally impossible to prove or disprove, leading to a negative expectation of passing the scrutiny of the Court or even having to argue such a case in court. Lastly, the expected overwhelming amount of calls to complain about violations, based on complaints received during the initial stages of the COVID-19 pandemic when masks and social distancing was not even enforceable, may very well overwhelm any Department tasked with responding to those complaints.

These reasons reinforce our recommendation for primarily voluntary compliance with an increased public awareness campaign coupled with the several programs the City is already involved in as well as State public campaigns for face coverings. The right solution for one City, even within New Hampshire, is not always the correct route for another and we should choose a route that is unique to Keene, the surrounding area, and our population and businesses.