

**CITY OF FAIRWAY, KANSAS  
ORDINANCE NO. 1755**

**AN ORDINANCE REGULATING PUBLIC OFFENSES WITHIN THE CITY OF FAIRWAY, KANSAS; AMENDING CHAPTER 8 OF THE CODE OF ORDINANCES, CITY OF FAIRWAY, KANSAS, TO REQUIRE THE WEARING OF MASKS OR OTHER FACE COVERINGS DURING THE COVID-19 PUBLIC HEALTH PANDEMIC AND RECOVERY.**

**WHEREAS**, the Governing Body of the City of Fairway, Kansas, prioritizes the protection of the health, safety, welfare and economic well-being of residents and visitors of the City of Fairway;

**WHEREAS**, COVID-19 is a disease caused by a novel coronavirus, previously unknown in humans, and is presently understood to cause, among other things, upper-respiratory tract illnesses that can range from mild to severe, spread quickly, and may cause death, particularly in older adults and persons with chronic medical conditions;

**WHEREAS**, according to the Centers for Disease Control and Prevention (CDC), Johnson County, Kansas, is currently an area where there is a "high" level of community transmission of COVID-19;

**WHEREAS**, this worrying trend of increased COVID-19 spread is a danger to the health and safety of residents and visitors to the City of Fairway, presenting a threat to the vitality of the City's economy;

**WHEREAS**, research shows that COVID-19 and its variants are spread primarily through respiratory droplets exhaled when infected people breath, talk, cough, or sneeze;

**WHEREAS**, the CDC has issued certain recommendations related to the COVID-19 pandemic, such that in addition to recommending the wearing of masks for unvaccinated persons, the CDC now recommends that even fully-vaccinated people wear a mask in public indoor settings in areas of substantial or high transmission, such as in Johnson County, Kansas;

**WHEREAS**, Chief Medical Officers from the region's hospital systems have advised that the regional healthcare system is currently in the throes of an unprecedented health care crisis that impacts the availability of and access to health care for all Fairway and regional residents, caused by the resurgence of COVID-19 patients and related hospital staff shortages; and

**WHEREAS**, for the aforementioned and other reasons, the governing body of the City of Fairway is acting pursuant to its constitutional home rule authority to provide for the health, safety, welfare and economic well-being of residents and visitors of the City of Fairway, by requiring that masks or other face coverings be worn as described in this ordinance.

**BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF FAIRWAY, KANSAS:**

**SECTION 1.** Chapter 8, Article VI of the Code of Ordinances, City of Fairway, Kansas,

is hereby amended to add new Section 8-216, reading as follows:

**8-216 Wearing masks in public places of business during the COVID-19 public health emergency and recovery.**

**(a) Mask or other face covering; definitions and applicability.**

(1) "Mask or other face covering" means a covering of the nose and mouth that is secured to the head with ties, straps, or loops over the ears or is simply wrapped around the lower face. A mask or other face covering can be made of a variety of synthetic and natural fabrics, including cotton, silk, or linen, and may include a plastic face shield. Ideally, a mask or other face covering has two or more layers. A mask or other face covering may be factory-made, sewn by hand, or can be improvised from household items such as scarfs, bandanas, t-shirts, sweatshirts, or towels.

(2) "Public space" means any indoor space or area that is open to the public.

(a) Except as set forth in subsection (b)(2) below, the term "public space" does not include private residential property or private offices or workspaces that are not open to customers or public visitors.

(b) The term "public space" shall not include, and this Section 8-216 shall not apply to (i) churches, synagogues, mosques, or other places of religious worship, (ii) public or private schools, or (iii) public buildings or facilities owned or operated by any unit of government or political subdivision other than the city itself, including but not limited to those buildings or facilities owned or operated by the county, the school district, the state, or the federal government, or any agency or division thereof.

**(b) Mask or other face covering; when required.** All persons in the city shall cover their mouths and noses with a mask or other face covering when they are in the following situations:

(1) Inside any indoor public space; or

(2) Obtaining services from the healthcare sector in settings, including but not limited to, a hospital, pharmacy, medical clinic, laboratory, physician or dental office, veterinary clinic, or blood bank, unless directed otherwise by an employee thereof or a health care provider.

(c) **Mask or other face covering; exemptions.** The following individuals are exempt from wearing a mask or other face covering in the situations described in subsection (b) above:

- (1) Persons aged five years or under—children aged two years and under in particular should not wear a mask or other face covering because of the risk of suffocation;
- (2) Persons with a medical condition, mental health condition, or disability that prevents wearing a face covering—this includes persons with a medical condition for whom wearing a mask or other face covering could obstruct breathing or who are unconscious, incapacitated, or otherwise unable to remove a face covering without assistance;
- (3) Persons who are deaf or hard of hearing, or communicating with a person who is deaf or hard of hearing, where the ability to see the mouth is essential for communication;
- (4) Persons for whom wearing a mask or other face covering would create a risk to the person related to their work, as determined by local, state, or federal regulators or workplace safety guidelines;
- (5) Persons who are obtaining a service involving the nose or face for which temporary removal of the mask or other face covering is necessary to perform the service;
- (6) Persons who are seated at a restaurant or other establishment that offers food or beverage service, while they are eating or drinking;
- (7) Persons who are guests in a private rental space where food or beverage services are being offered, while they are eating or drinking;
- (8) Persons who are engaged in an organized sports or athletic activity that allows persons or athletes to maintain a 6-foot distance from others with only infrequent or incidental moments of closer proximity;
- (9) Persons who are engaged in an activity that a professional or recreational association, regulatory entity, medical association, or other public-health-oriented entity has determined cannot be safely conducted while wearing a mask or other face covering;

- (10) Persons engaged in religious services, ceremonies or activities;
- (11) Persons engaged in an activity or event held or managed by the Kansas Legislature;
- (12) Persons engaged in a court-related proceeding held or managed by the Kansas Judiciary; and
- (13) Persons engaged in any lawful activity during which wearing a mask or other face covering is prohibited by law.

(d) **Mask or other face covering; penalties; enforcement.**

- (1) The knowing and willful failure or refusal to comply with the requirements of this Section 8-216 shall be an unclassified violation. Any fine imposed for a violation of this section shall not exceed \$25.00.
- (2) This Section 8-216 may be enforced by the police department, with appropriate proceedings following citation in municipal court.
- (3) Notwithstanding the foregoing, violation of any provision of this Section 8-216 constitutes an imminent threat and immediate menace to public health. All remedies prescribed in this Section 8-216 or otherwise available under applicable law, shall be cumulative, and the use of one or more remedies by the city shall not bar the use of any other remedy to enforce this Section 8-216.
- (4) It shall be an affirmative defense to any prosecution under subsection (b)(1) or (b)(2) that the person in violation is an individual listed under subsection (c).

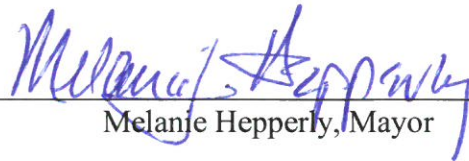
(e) **Mask or other face covering; Federal/state/county orders.** The provisions of this Section 8-216 shall not apply to the extent such provisions directly conflict with any current or subsequent orders issued by the United States Federal government (or agency thereof), the State of Kansas (or agency thereof), the Governor of the State of Kansas, the Board of County Commissioners for Johnson County, Kansas, the Local Health Officer of Johnson County, Kansas, or other applicable authorities.

(f) **Mask or other face covering; effective term.** The provisions of this Section 8-216 shall be in effect until 11:59 p.m. on February 18, 2022, unless further extended by ordinance of the Governing Body.

- (g) **Mask or other face covering; severability.** Severability is intended throughout and within the provisions of this section. If any subsection, sentence, clause, phrase, or portion of this section is held to be invalid, illegal, or unconstitutional by any court of competent jurisdiction, then that decision shall not affect the validity of the remaining portions of this section.

**SECTION 2.** This Ordinance shall take effect and be in force from and after its publication, or the publication of a certified summary thereof, in the official City newspaper.


**PASSED** by the City Council the 13th day of January, 2022. **APPROVED** by the Mayor.

  
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Melanie Hepperly, Mayor

ATTEST:

  
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Kim Young, City Clerk

APPROVED AS TO FORM:

  
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Richard Cook, City Attorney