

**MINUTES OF THE HEALTH & HUMAN SERVICES COMMITTEE
JULY 27, 2020
MEETING HELD VIRTUALLY**

Present: Councilmembers Litten, Rader, Kepple

Also Present: Councilmembers Shachner, Neff, & Bullock; Law Director Corrigan, Mayor George, Fire Chief Dunphy, Police Chief Wilkins, Planning Director Leininger, Human Services Director Gelsomino, members of the public

Call to Order: 7:00 p.m.

Approval of the minutes of the June 22, 2020 Health & Human Services Committee.

A motion was made and seconded to approve the minutes of the June 22, 2020 Health & Human Services Committee meeting. A roll call vote was conducted as follows:

Yeas: Litten, Rader, Kepple

Nays: none

Motion passed. Minutes approved.

RESOLUTION 2020-45 - A RESOLUTION, to take effect immediately provided it receives the vote of at least two thirds of the members of Council, or otherwise to take effect at the earliest period allowed by law, requiring the use of face coverings within the City of Lakewood and reducing interior occupancy loads to 50% of prior stated occupancy expiring upon lifting of the state-wide State of Emergency.

The Committee discussed a revised version of the ordinance (attached) that was distributed to on Friday Council via email. The most significant change is that occupancy restrictions have been removed. The mask mandate mirrors the state so that masks can be enforced locally.

Mayor George remarked that the changes to the legislation are a result of listening to feedback from the small business community. She credited the many businesses who are doing the right thing. She stated that the goal of the mask mandate is to change the penalty from a criminal penalty, which it is currently under the Governor's order, to a civil penalty. The revised ordinance also introduces the idea of using the Chapter 510 Nuisance Abatement to enforce violations of the Governor's order related to social distancing. She explained that enforcement is currently performed by the State investigative Unit and CCBH, both of which are overwhelmed. She expressed confidence that the legislation will empower safety forces to enforce the mandates. She also noted that the revised version removes the warning for a first offense and replaces it with a \$50 citation.

The Committee and the Mayor discussed the importance of disseminating the information regarding the legislation, assuming it passes. The Mayor is planning a press release, social media posts, and a community conversation that is in the works. She invited all councilmembers to help spread the word within their networks as well.

In response to questions from Councilmember Kepple, the administration expressed certainty that the penalty for failing to wear a mask under the Governor's order is in fact a criminal one. Mayor George expressed reluctance for giving someone a criminal record for the offense. Director Corrigan provided assurance that a resolution is an appropriate vehicle because it is temporary in nature. Director Corrigan further clarified that the Lakewood mask mandate will be in place until the expiration of the State of Ohio public health order requiring masks.

In response to questions by Councilmember Kepple, the administration clarified how enforcement of overcrowding and social distancing will take place as proposed by Section 6. of the substitute resolution. The legislation proposes using the Chapter 510 Nuisance Abatement process. After a third offense a business could see a \$400-\$600 fine, and possibly more.

Councilmember Kepple expressed concern that the stated penalties may not be enough to dissuade a business from complying, especially since these fines may not reflect a lot of money to a larger business.

Safety forces and law provided assurances that the City has additional enforcement authority not written into this legislation. For example, Chief Dunphy stated that there are penalties for failing to cooperate with a direct order of the fire marshal. He explained the department's experiences dispersing crowds at bars by orders music stopped and drinks not to be served. He explained that ultimately the enforcement is meant to be cooperative with the business owner.

Acting Chief Wilkins stated that since July 2, 2020 the City has done about 16 bar checks per weekend using police body cams. She stated that most establishments have been very receptive and that compared to other municipalities that Lakewood is being very proactive.

Councilmember Shachner questioned if it was appropriate for the City to de-criminalize something that the state has determined to be a crime, such as failure to wear a mask in this case.

Director Corrigan acknowledged that de-criminalizing failure to wear a mask could potentially be challenged but that he feels the City is on solid ground. He noted that other municipal mask mandates are written in this way.

Councilmember Shachner expressed concern that the proposed penalties in the nuisance chapter would not sufficiently deter violators. He reflected on the hardships facing restaurants and businesses and suggested that many may feel incentives to serve as many customers as possible to make up for tough losses, keep employees and sustain their business. He suggested a penalty in the range of \$3,500 - \$5,000.

Mayor George responded that the City doesn't have a lot of enforcement options and that this section of the resolution has been unchanged from the version originally proposed.

Director Corrigan added that the advantage of using the nuisance chapter is that the process is already established and proven effective, including a built-in appeals process.

Councilmember Litten noted that negative press and social media from enforcement against an establishment can often penalize the business and its reputation.

Councilmember Shachner disagreed that such negative press would deter the groups of people patronizing bars where violations are openly occurring. He agreed to defer to the administration regarding enforcement and penalties but expressed doubt about the strategy proposed in the resolution.

Councilmember Bullock expressed support for the amended version. He suggested an amendment to amend Section 4 to allow businesses to utilize physical barriers in lieu of six feet social distancing.

In response to questions by Councilmember Bullock, Director Corrigan provided clarification about enforcement of the resolution.

Councilmember Kepple restated her concerns that the proposed penalties under the nuisance chapter would not be enough to deter the boldest offenders. She pointed to an equity issue whereby the smallest businesses will be penalized and the largest may thumb their noses at the regulations.

Tom Fraiser of First Federal of Lakewood expressed support for legislation and enforcement of masks and social distancing. He discussed how he has had 150 employees working from home since March and that employees would feel more comfortable returning to the office knowing that Lakewood is prioritizing safety.

Chief Dunphy & Acting Chief Wilkins expressed support for using the nuisance process as part of the enforcement strategy. Chief Dunphy remarked that a business's reputation is more important than the particular fine and Acting Chief Wilkins explained how the nuisance process has worked as an effective deterrent in many cases, including repeated calls for false alarms.

A member of the public, Ralph Piunno asked questions about the proposed legislation.

In response to Mr. Piunno's questions, the committee discussed what constitutes an appropriate barrier. Director Corrigan also clarified that Sec. 1d of the legislation addresses *proper* mask use in that it defines face covering as any material that covers the individual's nose, mouth and chin.

Ian Andrews of Lakewood Alive thanked the committee and the administration for responding to the feedback of businesses. He expressed support and praised the legislation as a smart approach. He emphasized that a large number of businesses want to comply and are being safe.

A motion was made and seconded to recommend the substitute version of Resolution 2020-45 for adoption.

Discussion: Councilmember Bullock expressed support for the legislation and stated that he will be submitting an amendment for discussion on the floor.

Councilmember Rader expressed confidence in the legislation and thanked the administration and the business community for its input.

Councilmember Kepple expressed lingering doubts about the efficacy of the enforcement but that she wants to see the legislation move forward.

A roll call vote was conducted as follows:

Yeas: Litten, Kepple, Rader

Nays: none

Motion adopted. S. Reso 2020-45 recommended for adoption.

COVID-19 situation briefing

In the interest of time, Councilmember Litten did not address this agenda item but advised the committee to refer to the attachments on the docket.

The Committee adjourned at 8:10 p.m.

RESOLUTION NO.

BY:

A RESOLUTION, to take effect immediately provided it receives the vote of at least two-thirds of the members of Council, or otherwise to take effect at the earliest period allowed by law, requiring the use of face coverings within the City of Lakewood and restricting Businesses and operations which have the onsite consumption of food, beer, wine and liquor, reducing interior occupancy loads to 50% of prior stated occupancy expiring upon lifting of the state-wide State of Emergency.

WHEREAS, COVID-19 is a respiratory disease that can result in serious illness or death and can be easily spread from person to person; and

WHEREAS, the Centers for Disease Control and Prevention (CDC) reported over 4,024,492,545,250 cases of COVID-19 in the United States, resulting in over 143,868,26,369 deaths; and

WHEREAS, on March 9, 2020, the Ohio Department of Health announced confirmed cases of COVID-19 in the State of Ohio, creating a dangerous condition that may affect the health, safety and welfare of the citizens of Ohio; and

WHEREAS, on that same date, Governor Mike DeWine declared a state of emergency for the entire State to protect the well-being of the citizens of Ohio from the dangerous effects of COVID-19, and to assist in protecting the lives, safety, and health of the citizens of Ohio; and

WHEREAS, COVID-19 endangers the lives of the citizens of Lakewood, creating an emergency to life and public safety and disrupting commerce; and

WHEREAS, the CDC reports that people are most contagious when they are most symptomatic (the sickest) however some spread is possible before an individual may show symptoms; and

WHEREAS, on March 22, 2020, under the direction of Ohio Governor, Mike DeWine, Ohio Department of Health Director, Amy Acton, M.D. issued an order requiring all Ohioans to stay in their homes to prevent the further spread of COVID-19; and

WHEREAS, on May 22, 2020 the stay at home order expired allowing businesses to begin to open with the recommendation that facial coverings be worn except in certain circumstance; and

WHEREAS, as businesses have re-opened, more people are traveling throughout the state, and within Lakewood; and

WHEREAS, a local and statewide state of emergency continues to exist with limits on mass gatherings and recommendations of social distancing; and

WHEREAS, as a result of the above described emergency there is a continuing need to protect all citizens and guests of Lakewood from the risks relating to the COVID-19 pandemic; and

WHEREAS, the CDC recommends wearing face coverings in public where other physical distancing measures are difficult to maintain, to help prevent the spread of COVID-19 from asymptomatic or unknowing carriers to others; and

WHEREAS, as of this date, Cuyahoga County has been designated by the State of Ohio Public Health Advisory System Risk Level as Level 3 for COVID-19, characterized by very high exposure and spread with a recommendation to limit activities as much as possible; and

WHEREAS, as of this date, The State Health Director has issued a Statewide mandate to wear face coverings in public places indoors or outdoors in areas where people are unable to socially distancing; and

WHEREAS, requiring face coverings to be worn by any person in a public place within Lakewood best promotes health and safety, and efforts to limit the spread of COVID-19 while enabling the continuation of essential services, businesses, and travel necessary to protect public health and safety, and for the continuity of social and commercial life during the state of emergency; and

WHEREAS, after weighing the known information about the COVID-19 virus and considering the guidance from the Ohio Department of Health and the Cuyahoga County Board of Health, this Council concludes that the safety of Lakewood citizens is best protected by implementing a requirement to wear face coverings in public places as set forth herein; and

WHEREAS, as set forth in Section 2.12 of the Third Amended Charter of the City of Lakewood, this Council by a vote of at least two thirds of its members determines that this resolution is an emergency measure and that it shall take effect immediately, and that it is necessary for the immediate preservation of the public property, health, and of the citizens of Lakewood and those visiting Lakewood; now, therefore,

BE IT RESOLVED BY THE CITY OF LAKEWOOD, OHIO:

Section 1. In an effort to reduce the spread of COVID-19, all persons are required to wear a face covering when within the jurisdictional limits of the City of Lakewood including, without limitation:

- a) in any indoor location that is not a residence including common areas of apartment buildings and condominiums;
- b) when outdoors and unable to consistently maintain a distance of six feet or more from individuals who are not members of their household; or
- ~~e) waiting for, riding, driving, or operating public transportation, a taxi, a private car service, or a ride sharing vehicle. This does not apply to private or rental vehicles where members of a family are sharing a vehicle. This does not apply to vehicles engaged in direct travel through Lakewood that do not stop in Lakewood.~~

c)

d) The requirement to wear a face covering shall continue as long as the State of Ohio Mandate to wear face coverings is in effect pursuant the Order of the Health Director. For purposes of this Resolution, "face covering" includes any material covering an individual's nose, mouth and chin.

~~The requirement to wear a facial covering shall continue as long as Cuyahoga County, Ohio is at a Risk Level 3 (Red) or Risk Level 4 (Purple) Public Health Advisory Alert status as determined by the State of Ohio. For purposes of this Resolution, "face covering" includes any material covering an individual's nose, mouth and chin.~~

Section 2. The requirement to wear a ~~facial~~ covering does not apply when:

- a) the individual is under the age of 10;
- b) a medical condition, including those with respiratory conditions that restrict breathing, mental health conditions, or disability contraindicates the wearing of a facial covering;
- c) the individual is communicating or seeking to communicate with someone who is hearing-impaired or has another disability, where the ability to see the mouth is essential for communication;
- d) the individual is alone or in an enclosed space, such as an office, and which space is not intended for use or access to the public;
- e) the individual is actively engaged in exercise in a gym or indoor facility so long as six or more feet of separation between individuals exists;
- f) the individual is actively participating in athletic practice, scrimmage, or competition that is permitted under an Ohio Department of Health Order;
- g) the individual is actively engaged in a public safety activity, including but not limited to law enforcement, firefighters or emergency medical personnel;
- h) the individual is seated and actively consuming food or beverages in a restaurant or bar;
- i) facial coverings are prohibited by law or regulation;
- j) facial coverings are in violation of documented industry standards;
- k) facial coverings are in violation of a businesses documented safety policies;
- l) individual is actively participating in broadcast communications;
- m) the individual is an officiant of a religious service.

Schools that offer kindergarten through grade twelve instruction should follow the guidelines set forth by the Ohio Department of Education and the Ohio Department of Health.

Section 3. Nothing in this resolution is intended to interfere with the separation of powers under the Ohio Constitution. This resolution is not intended to supersede, supplant or preempt any order or law of a local jurisdiction that is more restrictive than this resolution.

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Section 4. Businesses and operations which have the onsite consumption of food, beer, wine and liquor must have their customers seated, with tables limited to no more than 10 persons and must maintain six foot social distancing for both employees and members of the public at all times including, but not limited to, when customers are standing in line, following the orders of the Director of Health as applicable to that individual business. Restrictions on businesses and operations shall not apply to religious gatherings or health care facilities including but not limited to medical offices, emergency departments, and nursing homes.

~~All interior occupancy loads, for retail and service businesses, are hereby reduced to 50% of that previously established by the Lakewood Division of Building and Housing or less as required by following the orders of the Governor of the State of Ohio as applicable to that individual business. Restrictions on occupancy loads shall not apply to religious gatherings or health care facilities including but not limited to medical offices, emergency departments, and nursing homes.~~

Section 5. A violation of this Resolution by an individual is a civil infraction. The Chief of Police and Lakewood Police Officers are hereby authorized to issue civil citations for a violation of this Resolution. Any person found in violation of this Resolution shall be subject to ~~a written warning on the first violation and~~ a civil penalty of \$50.00 for ~~a second and each subsequent~~ violation.

Section 6. For purposes of Lakewood Codified Ordinances Chapter 510, Nuisance Abatement, a violation of any order of the Governor of the State of Ohio or the Director of the Ohio Department of Health, or failure to enforce same, within a business establishment shall be defined as a Nuisance Activity and subject the property owner of the business establishment to the procedures and fees that are enumerated in that Chapter.

Section ~~7~~6. An individual who receives civil citation or a property owner of a business affected by a Nuisance Declaration under Chapter 510 of the Lakewood Codified Ordinances may follow the procedures in Lakewood Codified Ordinance 510.01(e) Reconsideration Request and (f) Appeal to the Board of Nuisance Abatement Appeals within 30 days from the date of issuance of a civil citation or declaration of nuisance.

Section ~~8~~7. This Resolution shall expire upon the state-wide COVID -19 related State of Emergency being lifted.

Section ~~9~~8. It is found and determined that all formal actions of this council concerning and relating to the passage of this resolution were adopted in an open meeting of this Council, and that all such deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements.

Section ~~10~~9. This Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare in the City and for the usual daily operation of the City for the reasons set forth and defined in the preamble to this Resolution, and provided it receives the affirmative vote of at least two thirds of the members of Council this Resolution shall take effect and be in force immediately upon its adoption by the Council and approval by the Mayor, or otherwise it shall take effect and be in force after the earliest period allowed by law.

Adopted: _____

President

Clerk

Approved: _____

Mayor

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