



**NOTICE OF A SPECIAL COUNCIL MEETING  
OF THE CITY COUNCIL OF THE CITY OF  
NORTH KANSAS CITY, MISSOURI,  
June 30, 2020  
6:00 PM**

**Pursuant to Section 2.04.030 of the Code of North Kansas City, Councilmembers Jesse Smith and Bryant DeLong have called for a Special City Council Meeting to discuss the implementation of mandatory facemask wearing in North Kansas City.**

***NOTICE IS HEREBY GIVEN* that the City Council of the City of North Kansas City, Missouri, will conduct a Special Council Meeting at 6:00 p.m. on Tuesday, June 30, 2020.**

Due to the Emergency Health Order declared by the Clay County Health Department this meeting will be held virtually, with the Mayor, City Council members and City staff joining the meeting through an on-line platform.

**1. Call Meeting to Order**

**2. Roll Call**

**3. Requiring Use of Face Coverings Under Certain Circumstances {Bill No 7518 (Ordinance No. 9315)}**



The City of Kansas City, Missouri and the Unified Government of Kansas City, Kansas and Wyandotte County have enacted a requirement to use face coverings in their jurisdictions under certain circumstances. Councilmembers Smith and DeLong have requested Council consideration of a similar requirement in North Kansas City.

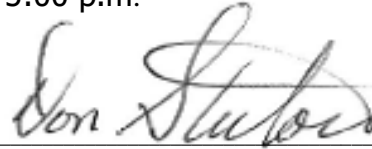
**4. Discussion of Purchasing Masks For Distribution and/or Sale to Residents and Businesses**

Councilmembers Smith and DeLong have requested a discussion and possible action on a program whereby the City will purchase masks for distribution and/or sale to North Kansas City residents or businesses.

**5. Adjournment**

This Special Council Meeting of the City Council of the City of North Kansas City, Missouri, has been duly called pursuant to the provisions of Section 2.04.030 of the Code of the City of North Kansas City, Missouri, by the undersigned Mayor of the City of North Kansas City, Missouri.

***DONE*** this 29<sup>th</sup> day of June 2020, at 5:00 p.m.

A handwritten signature in black ink, appearing to read "Don Stielow", written over a horizontal line.

Don Stielow, *Mayor*

Representatives of the news media may obtain copies of this notice by contacting:

Crystal Doss, City Clerk, City Hall  
2010 Howell Street  
North Kansas City, Missouri 64116  
Telephone No. (816) 274-6000

Posted on the 19th day of June 2020, at 1:00 p.m.

**Minutes of the North Kansas City, Missouri Special City Council Meeting of  
June 30, 2020**

Pursuant to Section 2.04.030 of the Code of North Kansas City, Councilmembers Jesse Smith and Bryant DeLong have called for a Special City Council Meeting to discuss the implementation of mandatory facemask wearing in North Kansas City.

Due to the recommendations of the Centers for Disease Control and the State of Emergency currently in effect in our area, this meeting will be held virtually, with the Mayor, City Council members and City staff joining the meeting on an online platform. The public may view the meeting live on Channel 2, the City's Cable Channel, or the City's YouTube channel, which can be found on the City's website at [www.nkc.org/live](http://www.nkc.org/live).

The following were present:

Mayor: Don Stielow  
Councilmembers: Bryant DeLong  
Anthony Saper  
Jesse Smith  
Lisa Tull  
Zachary Clevenger  
Rick Stewart  
Amie Clarke  
Tom Farr

Mayor Stielow called the meeting to order at 6:00 p.m.

The roll was called. Those present were C. Farr, C. DeLong, C. Saper, C. Smith, C. Tull, C. Clevenger, C. Stewart, and C. Clarke. No one was absent from the Council

Roll Call

Consideration of an Ordinance Providing for Policies and Procedures During Health and Safety Emergencies Within the City of North Kansas City, Missouri and Granting Certain Authority to the Mayor and the City Administrator {Bill No. 7518 (Ordinance No. 9315)}. City Administrator Eric Berlin asked City Counselor Tom Barzee to present this item to Council. Mr. Barzee stated that the City of Kansas City, Missouri and the Unified Government of Kansas City, Kansas and Wyandotte County have enacted a requirement to use face coverings in their jurisdictions under certain circumstances. This meeting is called for Council consideration of a similar requirement in North Kansas City. Discussion ensued. He summarized his legal opinion and key points of the

Ordinance No. 9315 –  
Requiring Use of Face  
Coverings Under  
Certain Circumstances

Emergency Order he had drafted. Mayor Stielow indicated his intention to issue the Emergency Order decided upon by the Council as long as it had strong support from the Council. Discussion ensued regarding the ordinance and the Emergency Order. C. DeLong moved to place Bill No. 7518 on first reading, seconded by C. Smith. The roll was called and the vote was as follows: C. Farr, yes – C. DeLong, yes – C. Saper, yes – C. Smith, yes – C. Tull, yes – C. Clevenger, yes – C. Stewart, yes – C. Clarke, yes. Motion carried 8-0. Bill No. 7518 was read. C. DeLong moved that Bill No. 7518 be placed on second and final reading and passed as Ordinance No. 9315, seconded by C. Smith. The roll was called, and the vote was as follows: C. Farr, yes – C. DeLong, yes – C. Saper, yes – C. Smith, yes – C. Tull, yes – C. Clevenger, yes – C. Stewart, yes – C. Clarke, yes. Motion carried 8-0. Bill No. 7518 was read. Thereupon Mayor Stielow declared the motion carried and the Bill duly passed. Said Bill was then numbered 9315, was signed and approved by the Mayor and attested by the City Clerk.

Discussion of Purchasing Masks for Distribution and/or Sale to Residents and Businesses. City Administrator Berlin stated that Councilmembers Smith and DeLong had requested a discussion and possible action on a program whereby the City will purchase masks for distribution and/or sale to North Kansas City residents or businesses. The consensus was that the City would purchase one-time use disposable masks to make available to the public, and they will be available for use by patrons of City facilities. A quantity of masks will also be placed in Police and Fire vehicles to be distributed as needed.

C. Smith moved to adjourn at 7:28 PM, seconded by C. DeLong. The roll was called and the vote was as follows: C. Farr, yes – C. DeLong, yes – C. Saper, yes – C. Smith, yes – C. Tull, yes – C. Clevenger, yes – C. Stewart, yes – C. Clarke, yes. Motion carried, 7-0.

Discussion of  
Purchasing Masks for  
Distribution and/or  
Sale to Residents and  
Businesses

Adjournment

Council Adjourned

  
\_\_\_\_\_  
Mayor

Attest:

  
\_\_\_\_\_  
City Clerk

Approved this 7<sup>th</sup> day of July, 2020

June 26, 2020

Honorable Jesse D. Smith  
Member—City Council  
City of North Kansas City  
2010 Howell  
North Kansas City, Missouri 64116

RE: City Counselor Opinion Letter No. 2020—4  
Face-Covering Requirements in Specific Settings

Dear Councilman Smith:

This opinion has been prepared in response to your question raised earlier this week in an email directed to the City Administrator which I summarized to be as follows:

**QUESTION**

“In a public health emergency, can the City of North Kansas City require the general public to wear face coverings in specific settings?”

**SUMMARY CONCLUSION**

Yes. As noted in *Antietam Battlefield KOA v. Hogan*, No. CV CCB-20-1130, 2020 WL 2556496, at \*17 (D. Md. May 20, 2020), when leaders exercise “the powers given to [them] by the legislature in the face of the COVID-19 crisis, [and have] made reasonable choices informed, if not dictated by, such data, science, and advice,” courts will generally uphold those orders. “Neutral and generally applicable face-covering requirements are rational countermeasures adapted to rapidly changing data about a viral pandemic<sup>1</sup>. . . . The [United States] Supreme Court has—and lower courts should—entrust the politically accountable branches with protecting public health and safety.” Polly J. Price & Patrick C. Diaz, *Face-Covering Requirements and the Constitution*, Expert Forum Law & Policy Analysis (June 3, 2020), <https://www.acslaw.org/expertforum/face-covering-requirements-and-the-constitution> (last visited June 26, 2020).

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<sup>1</sup> It should be noted that face-mask requirements are also substantially related to an important government objective, should some form of heightened scrutiny apply to interests in bodily integrity.

## LEGAL ANALYSIS

### **A. Statutory Authority Granted to Third Class City.**

The City of North Kansas City, Missouri (the “City”) is a city of the third class organized and operating pursuant to Chapter 77, MO. REV. STAT., generally known as the mayor-council form of government. “Municipal corporations owe their origins to, and derive their powers and rights wholly from the state, and ‘where the Legislature has authorized a municipality to exercise a power and prescribed the manner of its exercise, the right to exercise the power given in any other manner is necessarily denied.’” *Pearson v. City of Washington*, 439 S.W.2d 756, 760 (Mo App. 1969) quoting *State ex rel. City of Blue Springs v. McWilliams*, 335 Mo. 816, 820, 74 S.W.2d 363, 365 (1934).

It is a well-settled general principle of law that a “city, which is a creature of the legislature, possesses only those powers expressly granted, or those necessarily or fairly implied in or incidental to express grants, or those essential to the declared objects of the city, and any reasonable doubt as to whether a power has been delegated to a city is resolved in favor of non-delegation.” *Wilson v. City of Waynesville*, 615 S.W.2d 640, 643 (Mo. App. 1981), citing *City of Kirkwood v. City of Sunset Hills*, 589 S.W.2d 31, 35 (Mo. App. 1979); see also, *Anderson v. City of Olivette*, 518 S.W.2d 34, 39 (Mo. 1975). A general premise of the law of municipal corporations is that a municipal corporation derives its powers from the state legislature, rather than directly from the people. A municipal corporation, therefore, possesses only those powers expressly contained in enabling legislation and those powers necessarily implied in that legislation.

As provided for in § 77.260 of the Missouri Revised Statutes, the Mayor and City Council “shall have the care, management and control of the city and its finances, and shall have power to enact and ordain any and all ordinances not repugnant to the constitution and laws of this state, and such as they shall deem expedient for the good government of the city, the preservation of peace and good order, . . . , and the health of the inhabitants thereof, and such other ordinances, rules and regulations as may be deemed necessary to carry such powers into effect, and to alter, modify or repeal the same.”

The legislature has also clearly authorized the City Council to “make regulations and pass ordinances for the prevention of the introduction of contagious diseases into the city, and for the abatement of the same, and may make quarantine laws and enforce the same within five miles of the city . . . and [the City Council may] make regulations to secure the general health of the city.” MO. REV. STAT. § 77.530.

Finally, from a very general standpoint, “[f]or any purpose or purposes mentioned in this chapter [Chapter 77 of the Missouri Revised Statutes], the council may enact and make all necessary ordinances, rules and regulations; and they may enact and make all such ordinances and rules, not

inconsistent with the laws of the state, as may be expedient for maintaining the peace and good government and welfare of the City. MO. REV. STAT. § 77.590.<sup>2</sup>

## **B. Background Facts.**

Clearly, “[t]he world is in the grip of a public health crisis more severe than any seen for a hundred years.” *Antietam Battlefield KOA v. Hogan*, No. CV CCB-20-1130, 2020 WL 2556496, at \*1 (D. Md. May 20, 2020). In the United States, over 2,461,444 people are confirmed to have been infected with COVID-19 and over 124,960 people have died from the disease it causes.<sup>3</sup> In Missouri, over 20,203 people have been infected and over 997 people have died. Unfortunately, the number of virus infections is trending upward and yesterday (June 25), Missouri experienced its highest number of infections in a single day with 514 new cases being diagnosed. Clay County numbers are also trending upwards as of the date of this opinion letter.

In order to slow the spread of COVID-19, the federal Center for Disease Control and Prevention (“CDC”) presently recommends the use of cloth face coverings in public settings such as grocery stores where other social distancing measures are difficult to maintain. “Apart from avoiding crowded indoor spaces, the most effective thing people can do is wear masks, all of the experts said. Even if masks do not fully shield you from droplets loaded with virus, they can cut down the amount you receive, and perhaps bring it below the infectious dose.” Apoorva Mandavilli, *It is not whether you were exposed to the virus. It is how much*, *The New York Times* (June 2, 2020), reprinted in the *South Florida Sun Sentinel*, <https://www.sun-sentinel.com/coronavirus/sns-nyt-not-if-you-were-exposed-to-the-virus-but-how-much-20200602-2wesewhku3gn3ot33vhk2l7qqm-story.html> (last visited June 26, 2020). Some state and local governments mandate the use of face masks or coverings in specific settings, typically in retail establishments and on public transportation. With face masks being required in certain states and municipalities around the country, lawsuits challenging them have followed in a number of instances.

If North Kansas City were to require face-coverings in specific settings, how strong would the City’s legal position be if challenged in court? This opinion letter will now shift to addressing various legal arguments regarding face mask requirements in the City.

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<sup>2</sup> The only restriction for making such ordinances, rules and regulations with respect to health regulations is set forth in §192.290, MO. REV. STAT., which provides in part that “[n]othing [in §192.290] shall limit the right of local authorities to make such further ordinances, rules and regulations not inconsistent with the rules and regulations prescribed by the department of health and senior services which may be necessary for the particular locality under the jurisdiction of such local authorities.”

<sup>3</sup> Severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) is the cause of coronavirus disease 2019, commonly referred to as COVID-19. *Naming the Coronavirus Disease and the Virus that Causes It*, World Health Organization, [https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-\(covid-2019\)-and-the-virus-that-causes-it](https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-(covid-2019)-and-the-virus-that-causes-it) (last visited June 26, 2020).

### **C. Constitutional Rights in an Emergency.**

In drafting this opinion letter, not only am I providing my legal opinion in addressing your fundamental question, but I also must consider the likelihood of success in the event the City should be challenged in court. Based upon my research, it appears that one of the primary legal arguments being raised in lawsuits filed against states, counties and cities challenging the requirement that adults must wear a face mask while in public<sup>4</sup> during the ongoing COVID-19 pandemic, has been that such a requirement is unconstitutional. These recent cases “raise[] an issue that has long been a source of struggle for the courts: the proper use of the judicial power in reviewing laws and executive orders or actions taken in response to a public health emergency.” *S. Wind Women’s Ctr. LLC v. Stitt*, No. CIV-20-277-G, 2020 WL 1677094, at \*1 (W.D. Okla. Apr. 6, 2020).

States have broad powers to act during an emergency to secure public health and safety. *Jacobson v. Massachusetts*, 197 U.S. 11, 29, 25 S.Ct. 358, 49 L.Ed. 643 (1905). “[T]he rights of the individual in respect of his liberty may at times, under the pressure of great dangers, be subjected to such restraint, to be enforced by reasonable regulations, as the safety of the general public may demand.” *Id.* Those powers are not unfettered, however. A state may implement measures that curtail constitutional rights during an emergency only “so long as the measures have at least some ‘real or substantial relation’ to the public health crisis and are not ‘beyond all question, a plain, palpable invasion of rights secured by the fundamental law.’ ” *In re Abbott*, 954 F.3d 772, 784 (5<sup>th</sup> Cir. 2020) (quoting *Jacobson*, 197 U.S. at 31, 25 S.Ct. 358).

Under this framework, courts may review whether a challenged emergency measure implemented by a state is arbitrary or unreasonable, and whether the measure “lack[s] basic exceptions for ‘extreme cases.’ ” *Id.*; see also *Jacobson*, 197 U.S. at 28, 38-39, 25 S.Ct. 358. But courts must take care not to “second-guess the wisdom or efficacy of the measures.” *In re Abbott*, 954 F.3d at 785 (citing *Jacobson*, 197 U.S. at 28, 30, 25 S.Ct. 358). “It is no part of the function of a court ... to determine [what is] likely to be the most effective for the protection of the public against disease.” *Jacobson*, 197 U.S. at 30, 25 S.Ct. 358. It is, rather, the role of the people’s elected representatives to determine, in light of the available information, the best course to combat a public health threat, and courts must be careful not to usurp that role. *Id.* at 28, 30, 25 S.Ct. 358; see also *Phillips v. City of N.Y.*, 775 F.3d 538, 542 (2d Cir. 2015) (weighing scientific evidence as to societal costs and benefits of public health measures “is a determination for the legislature, not ... individual objectors”); *Hickox v. Christie*, 205 F. Supp. 3d 579, 592 (D.N.J. 2016) (a public health official’s “better-safe-than-sorry determination” is “entitled to deference, absent a ‘reliable showing of error’ ”).

As set out in an earlier section of this opinion letter, the Missouri legislature has granted authority to the local government the power and duty to investigate and control the spread of disease during an emergency epidemic. See, e.g., MO. REV. STAT. § 77.530.

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<sup>4</sup> I would point out, however, that most, if not all, orders requiring the wearing of face masks in public have certain exceptions (e.g., children are excluded, as are those with a health condition that would prevent them from wearing a face mask).



Honorable Jesse D. Smith, *Councilman*

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The well-established test that governs when courts are asked to analyze the constitutionality of state powers to protect the public health was declared over 100 years ago. Even before the world faced the 1918 influenza pandemic<sup>5</sup>, also known as the Spanish flu, the United States Supreme Court upheld states' (and localities') authority under their police power "to enact quarantine laws and health laws of every description" in order to "protect [themselves] against an epidemic of disease which threatens the safety of [their] members." *Jacobson*, 197 U.S. at 25, 27 (internal quotation marks omitted). Recognizing that such enactments could pose a significant risk to individual liberties, the Supreme Court reasoned that preservation of the general welfare requires such sacrifices: "in every well-ordered society charged with the duty of conserving the safety of its members[,] the rights of the individual in respect of his liberty may at times, under the pressure of great dangers, be subjected to such restraint, to be enforced by reasonable regulations, as the safety of the general public may demand." *Id.* at 29. Ultimately, the Supreme Court explained, "it [i]s the duty of the constituted authorities primarily to keep in view the welfare, comfort, and safety of the many, and not permit the interests of the many to be subordinated to the wishes or convenience of the few." *Id.* at 27–29 (emphasis added).

Nevertheless the Supreme Court appreciated that some level of scrutiny was necessary, for states could quite conceivably exercise their emergency powers "in such an arbitrary, unreasonable manner, or might go so far beyond what was reasonably required for the safety of the public, as to authorize or compel the courts to interfere for the protection of such persons." *Id.* at 28. To balance this concern with the requisite deference to the enacting body during a public health crisis, the Supreme Court articulated the following governing test:

[I]f a statute purporting to have been enacted to protect the public health, the public morals, or the public safety, has no real or substantial relation to those objects, or is, beyond all question, a plain, palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution.

*Id.* at 31. In other words, "when a state or locality exercises emergency police powers to enact an emergency public health measure, courts will uphold it unless (1) there is no real or substantial relation to public health, or (2) the measures are 'beyond all question' a 'plain, palpable invasion of rights secured by [ ] fundamental law.'" *Cross Culture Christian Ctr. v. Newsom*, — F.Supp.3d —, —, No. 2:20-CV-00832-JAM-CKD, 2020 WL 2121111, at \*4 (E.D. Cal. May 5, 2020) (quoting *Jacobson*, 197 U.S. at 31, 25 S.Ct. 358).

As you can imagine, constitutional doctrine changed profoundly over the past century, not only with respect to due process and equal protection but also individual and associational rights under the First Amendment. It should be pointed out that *Jacobson* has been thoughtfully criticized

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<sup>5</sup> In 1905, the U.S. Supreme Court had called for just such deference in *Jacobson v. Massachusetts*. In the midst of a small-pox outbreak, local authorities could mandate vaccination on penalty of a fine for refusal: "Upon the principle of self-defense, of paramount necessity, a community has the right to protect itself against an epidemic of disease which threatens the safety of its members."

recently by legal scholars for lacking in limiting principles characteristic of legal standards. Lindsay F. Wiley & Stephen I. Vladeck, *Coronavirus, Civil Liberties, and the Courts: The Case Against “Suspending” Judicial Review*, 133 HARV. L. REV. F. at p. 4 (2020). Yet *Jacobson* has continued to be the seminal decision on public health authority in an emergency, against which modern civil rights and liberties are balanced.

Significantly during the ongoing COVID-19 pandemic, Chief Justice John Roberts unquestionably relied on *Jacobson* in a recent religious liberty case. In *South Bay United Pentecostal Church v. Newsom*, \_\_\_ U.S. \_\_\_, 140 S.Ct. 1613 (2020), the Chief Justice affirmed the central position of *Jacobson v. Massachusetts*:

Our Constitution principally entrusts “[t]he safety and the health of the people” to the politically accountable officials of the States “to guard and protect.” *Jacobson v. Massachusetts*, 197 U. S. 11, 38 (1905). When those officials “undertake to act in areas fraught with medical and scientific uncertainties,” their latitude “must be especially broad.” *Marshall v. United States*, 414 U. S. 417, 427 (1974). Where those broad limits are not exceeded, they should not be subject to second-guessing by an “unelected federal judiciary,” which lacks the background, competence, and expertise to assess public health and is not accountable to the people.

I would point out that the *South Bay United Pentecostal Church* case was decided by a 5-4 majority and the decision generated a dissent by Justice Kavanaugh, joined by Justices Thomas and Gorsuch. Nevertheless, as the U.S. Supreme Court’s first involvement in the COVID-19 control efforts by state and local governments, Chief Justice Roberts clearly intended to provide broad guidance to lower courts. “*Jacobson v. Massachusetts* counsels judges to afford wide latitude to the judgment of health experts, so long as such measures are neutral, generally applicable, and have a medical necessity a government can justify. Thus while courts must be deferential to the need to protect public health, courts must also be vigilant against abuses of public health powers. To do that they must ask what is reasonable, look at the public health evidence, and be attuned to the pre-textual or abuse of power.” Polly J. Price & Patrick C. Diaz, *Face-Covering Requirements and the Constitution*, Expert Forum Law & Policy Analysis (June 3, 2020), <https://www.acslaw.org/expertforum/face-covering-requirements-and-the-constitution> (last visited June 26, 2020).

## CONCLUSION

It is the opinion of the city counselor that either an ordinance or an order issued by the Mayor under proper authority granted by the City Council requiring face-coverings in public settings where other social distancing measures are difficult to maintain would be authorized under the law and are solidly supported by the law and, if challenged in court, I believe the City’s actions would be found to be constitutional and legal. This opinion should not be read as an endorsement of requiring the wearing of face-coverings in public settings, but rather as authority to do so, should the

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City Council, acting in its legislative capacity, decide to enact such an ordinance or grant to the Mayor the authority to execute an appropriate order.

I trust you will find all to be in order, but should you have any questions or comments, please do not hesitate to contact me

Very truly yours,

A handwritten signature in blue ink that reads "Thomas E. Barzee, Jr." followed by a horizontal line extending to the right.

Thomas E. Barzee, Jr.  
*City Counselor*

cc: Don Stielow, *Mayor*  
Eric Berlin, *City Administrator*

**AN ORDINANCE PROVIDING FOR POLICIES AND PROCEDURES DURING HEALTH AND SAFETY EMERGENCIES WITHIN THE CITY OF NORTH KANSAS CITY, MISSOURI AND GRANTING CERTAIN AUTHORITY TO THE MAYOR AND THE CITY ADMINISTRATOR.**

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**WHEREAS**, the City of North Kansas City, Missouri (the “**City**”) is a body corporate, a third class city and political subdivision of the State of Missouri, duly created, organized and validly existing under and by virtue of the Constitution and laws of the State of Missouri; and

**WHEREAS**, on March 18, 2020, a proclamation of a state of emergency (the “**Proclamation**”) was issued to allow the City of North Kansas City (the “**City**”) to take measures to reduce the possibility of exposure to COVID-19<sup>1</sup> and promote the health and safety of North Kansas City residents, along with an accompanying order; and

**WHEREAS**, the aforesaid state of emergency continues to exist in the City, as well as throughout all areas surrounding the City; and

**WHEREAS**, COVID-19, a respiratory disease that spreads easily from person to person and may result in serious illness or death, is a public health catastrophe and has been confirmed in the City and in the surrounding Kansas City metropolitan area; and

**WHEREAS**, the power to protect the health of the inhabitants of a municipality is wider in range than other police powers granted to a municipality by the State of Missouri; and

**WHEREAS**, pursuant to the provisions of § 77.260 of the Missouri Revised Statutes the Mayor and City Council “shall have the care, management and control of the city and its finances, and shall have power to enact and ordain any and all ordinances not repugnant to the constitution and laws of this state, and such as they shall deem expedient for the good government of the city, the preservation of peace and good order, . . . , and the health of the inhabitants thereof, and such other ordinances, rules and regulations as may be deemed necessary to carry such powers into effect, and to alter, modify or repeal the same”; and

**WHEREAS**, pursuant to the provisions of § 77.530 of the Missouri Revised Statutes the City Council may make regulations and pass ordinances for the prevention of the introduction of contagious diseases into the City, and for the abatement of the same, and may make quarantine laws and enforce the same within five miles of the City, and may make regulations to secure the general health of the City; and

**WHEREAS**, for any purpose or purposes set forth in Chapter 77 of the Missouri Revised Statutes, § 77.590 of the Missouri Revised Statutes provides that the City Council may enact and make all necessary ordinances, rules and regulations; and they may enact and make all

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<sup>1</sup> Severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) is the cause of coronavirus disease 2019, commonly referred to as COVID-19.

such ordinances and rules, not inconsistent with the laws of the state, as may be expedient for maintaining the peace and good government and welfare of the City; and

**WHEREAS**, pursuant to the provisions of § 192.290 of the Missouri Revised Statutes the City has been granted the authority to make such further ordinances, rules and regulations, which may be necessary for the City, so long as such ordinances, rules and regulations are not inconsistent with the rules and regulations prescribed by the Missouri Department of Health and Senior Services; and

**WHEREAS**, the Center for Disease Control (the “**CDC**”), in addressing COVID-19 has stated that spread of the virus from person-to-person happens most frequently among close contacts; and

**WHEREAS**, COVID-19 continues to create a health emergency throughout the nation and throughout the greater metropolitan Kansas City area, including North Kansas City; and

**WHEREAS**, the City Council, recognizing the ongoing state of emergency, desires to continue to employ all means available under the law to protect public life, health, safety and property to limit the development, contraction and spread of COVID-19, and, therefore, concludes that it is in the best interests of the City and its residents to adopt this ordinance granting the Mayor and City Administrator certain emergency powers and authority.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NORTH KANSAS CITY, MISSOURI, AS FOLLOWS:**

**Section 1.** **Findings of the City Council.** The City Council of the City of North Kansas City, Missouri, does hereby find and determine that the City must continue to adequately deal with and address the emergency created by COVID-19 in order to (a) reduce the threat to human health caused by the transmission of the novel coronavirus in the City, (b) protect the public health, safety, and welfare, (c) protect, preserve and save lives of the citizens of the City, and (d) continue to maintain government operations.

**Section 2.** **Goals and Objectives.** To accomplish the goals and objectives set forth in Section 1 of this Ordinance, the City Council finds and declares it necessary:

A. To continue to use the City emergency management organization responsible for responding to, and to continue to address aspects of emergency government operations during, this ongoing health emergency caused by COVID-19;

B. To provide for the exercise of necessary powers during this continuing emergency;

C. Where necessary and appropriate under the circumstances, to provide for the rendering or receiving of mutual aid between the City and other political subdivisions of this state and of other states with respect to the carrying out the intent of this Ordinance; and

D. To comply with the provisions of all applicable laws of the United States and of the State of Missouri.

**Section 3. Emergency Policies and Rules.** The City Council of the City of North Kansas City, Missouri, does hereby declare, establish and formally restate and, if necessary, readopt the following policies and rules regarding the operation of City government during the period that a state of emergency exists within the City arising out of or in any way related to COVID-19:

A. **Approval of Purchases and Spending Authority.** The Mayor is hereby granted authority to approve and expend appropriate sums necessary for all purchases necessary for the continuity of City operations, including, but not limited to, payments related to City payroll, utility expenses, refunds, insurance payments, invoices for ongoing capital improvement projects, credit card/procurement card payments, payments to vendors and/or contractors for regular business needs (*e.g.*, chemicals for water treatment, EMS supplies, *etc.*), and payments to outside consultants for ongoing services being rendered to the City. City staff shall produce a weekly report of all such expenses paid and provide such report to the Mayor and City Council electronically. The Mayor may delegate the day-to-day approval of such expenditures to the City Administrator. All such payments and expenses authorized under the provisions of this temporary City policy and procedure shall be presented to the City Council for ratification at a City Council meeting (which may be electronic as described in Paragraph B below) no later than thirty (30) days after such expenditures are made and will be subject to review and audit by the City's independent auditor. It is the intent of the City Council that during this declared emergency, the primary and fundamental operations of City government shall continue uninterrupted.

B. **City Council Meetings.** Inasmuch as the CDC has recommended no large meetings or large public gatherings occur during this health emergency, the City Council hereby establishes that all City Council meetings shall continue to be held electronically using a method that allows the public to view and hear all discussions, presentations, actions and votes taken by the Mayor and City Council. Notice of the online/electronic meetings shall be appropriately published and given so as to provide the public with reasonable access to all such meetings. The City Council may continue to meet by Zoom conference system, Skype, internet chat, internet message board, or any other equivalent electronic means. If necessary to conduct the meeting, a conference call may be held. The Mayor and City Council may also hold closed electronic meetings (using a method authorized above for open meetings) for those specific topics authorized under the Missouri Open Meetings law by giving appropriate notice as required by law. Notice of the meetings and how to gain access to all such meetings shall be posted on the City's website. This form of City Council meetings, both open and closed, shall cease immediately upon conclusion of the health emergency.

**Section 4. Powers of Mayor under Proclamation of Health Emergency.**

A. Pursuant to the provisions of § 77.530, Missouri Revised Statutes, the City Council is authorized to make regulations and pass ordinances for the prevention of the introduction of contagious diseases into the City, and may make quarantine laws and make regulations to secure the general health of the City and, therefore, during the state of emergency

presently existing in the City, as described in this ordinance, the City Council hereby grants to the Mayor, in addition to all other powers granted by the laws of the State of Missouri and the ordinances of the City, the power to issue a proclamation declaring a continued state of emergency to exist in the City, and also grants the Mayor the following powers and authority to protect people and property in the City during this state of emergency:

(1) To temporarily waive routine administrative and budgetary requirements that may impede the effective delivery of essential public services.

(2) To order the evacuation of areas where there is a threat to public health and safety, and to designate any public place, public street, thoroughfare, or parking area and any other place closed to motor vehicles, persons and pedestrian traffic;

(3) To order the closing of any and all business establishments (including, but not limited to, restaurants and movie theaters) throughout the City or any portion thereof during the period for which the state of emergency;

(4) To order the closing of all retail and wholesale liquor stores, taverns, bars and other places dispensing, serving or permitting the consumption of intoxicating liquor or nonintoxicating beer;

(5) To order the discontinuance of the sale, distribution or giving away of intoxicating or nonintoxicating liquors;

(6) To order the closing of all private clubs or portions thereof wherein the consumption of intoxicating liquor or nonintoxicating beer is permitted;

(7) To issue orders deemed necessary to protect life and property and to preserve critical resources within the purposes of this ordinance.

B. Any such proclamation of a state of emergency shall become immediately effective upon its execution and issuance by the Mayor and the original thereof shall be filed and remain in the office of the City Clerk.

C. The proclamation and all orders issued in accordance with the provisions of this section shall remain in effect continuously from the date and time of the issuance thereof for such period of time as specifically prescribed therein or upon the issuance of a proclamation or order determining an emergency no longer exists, whichever occurs first. Once a specific order is issued by the Mayor, such order may only be rescinded or withdrawn by a majority vote of the City Council. The Mayor may, however, amend an existing order so long as such amendment is to extend the effective date of the existing order or to add requirements that would protect the public from COVID-19.

D. Penalty. It shall be unlawful for any person to fail, neglect or refuse to comply with the order made or prohibitions instituted by a proclamation issued under the provisions of this section, or for any person to otherwise violate or in any manner aid, assist, encourage, or support the commission or perpetration of a violation of such proclamation, and upon conviction thereof any such person shall be punished by a fine of not less than \$25.00 and not more than \$500.00, or by imprisonment for a period of time not less than one

day and not more than three months. For the purpose of the prosecution of any person for the violation of this section, a copy of the proclamation of the Mayor certified by the City Clerk to be a true and correct copy thereof shall be deemed to constitute prima facie evidence that such proclamation was duly issued by the Mayor on the date and at the time set forth therein pursuant to the authority contained in this section.

**Section 5.** Preemption. Nothing in this Ordinance shall be interpreted or applied so as to create any power, duty or obligation in conflict with, or preempted by, any Federal or State law.

**Section 6.** Further Authority. The City shall, and the Mayor, City Clerk, City officials and employees of the City are hereby authorized and directed to take such further action, and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance.

**Section 7.** Severability. The sections, paragraphs, sentences, clauses, and phrases of this Ordinance shall be severable. In the event that any such section, paragraph, sentence, clause, or phrase of this Ordinance is found by a court of competent jurisdiction to be invalid, the remaining portions of this Ordinance are valid, unless the court finds the valid portions of this Ordinance are so essential to and inseparably connected with and dependent upon the void portion that it cannot be presumed that the City has enacted the valid portions without the void ones, or unless the court finds that the valid portions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.

**Section 8.** Governing Law. This Ordinance shall be governed exclusively by and construed in accordance with the applicable laws of the State of Missouri.

**Section 9.** Effective Date. This Ordinance shall be in full force and effect immediately after its passage by the City Council and approval by the Mayor and will remain in full force and effect until the such time as (a) the City Council revokes, rescinds, amends or otherwise modifies this ordinance; (b) COVID-19 is no longer a health problem anywhere in the Kansas City metropolitan area; or (c) the CDC declares that COVID-19 no longer creates an emergency health crisis or health concern for the United States, whichever shall first occur.

**PASSED** this 30<sup>th</sup> day of June, 2020.

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Don Stielow, *Mayor*

ATTEST:

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Crystal, Doss, *City Clerk*

**APPROVED** this 30<sup>th</sup> day of June, 2020.



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Don Stielow, *Mayor*

**APPROVED AS TO FORM:**

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Anthony W. Bologna, *City Attorney*

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Thomas E. Barzee, Jr., *City Counselor*

**FIFTH AMENDED ORDER**  
**Arising from the Spread of COVID-19 and**  
**Requiring Use of Face Coverings under Certain Circumstances**

**WHEREAS**, a state of emergency and catastrophic health emergency was proclaimed on March 18, 2020, to allow the City of North Kansas City (the “**City**”) to take measures to reduce the possibility of exposure to COVID-19 and promote the health and safety of North Kansas City residents, along with an accompanying order, and the state of emergency and catastrophic health emergency still exists; and

**WHEREAS**, the COVID-19 virus spreads between people who are in close contact with one another through respiratory droplets; and

**WHEREAS**, a gathering of individuals without necessary mitigation for the spread of infection will pose a risk of the spread of infectious disease; and

**WHEREAS**, the City wishes to employ all means available under the law to protect public life, health, safety and property to limit the development, contraction and spread of COVID-19 creating this emergency; and

**WHEREAS**, the City has been advised that as of June 25, 2020, the Kansas City Health Department confirmed 1,887 cases of the COVID-19 illness in Kansas City, 133 of which required hospitalization, and 32 deaths, from the COVID-19 illness in Kansas City; and

**WHEREAS**, numerous cases of the COVID-19 illness has been reported in Clay County, a number of which have required hospitalization and there have also been deaths attributable to the COVID-19 virus in Clay County; and

**WHEREAS**, the Centers for Disease Control (the “**CDC**”) continues to study the spread and effects of COVID-19 across the United States and has determined that a significant portion of individuals with coronavirus lack symptoms and that even those who eventually develop symptoms can transmit the virus to others before showing symptoms which means that the virus can spread between people interacting in close proximity (for example, speaking, coughing, or sneezing) even if those people are not exhibiting symptoms; and

**WHEREAS**, the CDC recommends wearing cloth face coverings in public settings where other social distancing measures are difficult to maintain including but not limited to, grocery stores and pharmacies and other areas of significant community-based transmission; and

**WHEREAS**, the CDC is advising the use of simple cloth face coverings to slow the spread of the virus and help people who may have the virus and do not know it from transmitting it to others.

**WHEREAS**, by authority granted to the Mayor in Ordinance No. 9315, on June 30, 2020, Mayor Don Stielow has issued this Fifth Amended Order;

**NOW, THEREFORE, IT IS HEREBY ORDERED:**

That in accordance with Section Five below, the following Fifth Amended Order (the “**Order**”) is enacted to read as follows:

**Section One:** Community Health Guidance.

A. People at high risk of severe illness from COVID-19, based upon sound medical findings and recommendations, are urged to stay in their residence or place of rest except as necessary to seek medical care and to obtain provision of essential life items. All individuals should exercise social distancing requirements at all times, including wearing face coverings or masks when others may be present closer than six feet away.

B. All persons are encouraged to limit exposure, to the extent possible, by wearing masks, maintaining social distancing, as defined infra, and avoiding large groups or other crowd-based activities.

C. For the purposes of this Order: “Social Distancing Requirements” includes maintaining at least a six-foot social distancing from other individuals and wearing a Face Covering that covers the nose and mouth in any indoor public accommodation.

**Section Two:** Business Operations.

A. A reasonable standard of care is established in North Kansas City requiring that businesses shall reasonably accommodate employees with health or safety concerns or with responsibilities to care for minors or other persons to not report to work while this Order is in effect, absent undue hardship, if:

1. The employee has an underlying health condition, including but not limited to, Asthma, other respiratory conditions, or AIDS or other illnesses that result in a compromised immune system, putting that person at greater risk of death or serious injury if they contract COVID-19; or

2. The employee is the primary caregiver for a family member who contracted COVID-19 and qualifies for leave under the Family Medical Leave Act; or

3. The employee is employed by a business with fewer than 500 employees, and under the Families First Coronavirus Relief Act (FFCRA) that employee is eligible

for paid leave because the employee must care for a minor child due to the closure or loss of a caregiver resulting from the COVID-19 pandemic.

B. All previous limits on business operations and gatherings under previous COVID-19 orders are rescinded, with the following exceptions:

1. All employees or visitors to any indoor public accommodation must wear face coverings. These spaces include, but are not limited to, grocery and other retail stores, special events, and public transit. Exceptions:

- i. Minors, though the CDC guidance strongly recommends that children over age ten wear face coverings.
- ii. Persons who have disabilities that:
  - a. Prevent them from comfortably wearing or taking off a Face Covering.
  - b. Prevent them from communicating while wearing a Face Covering.
- iii. Persons who have a respiratory condition that is exacerbated by the wearing of a Face Covering.
- iv. Persons who have been told by a medical, legal, or behavioral health professional not to wear a Face Covering.
- v. Persons who are in a restaurant or tavern and are actively engaged in consuming food or drink while adequately distanced from other patrons.
- vi. Persons who are hearing impaired, or communicating with a person who is hearing impaired, where the ability to see the mouth is essential for communication.
- vii. Persons who are obtaining a service involving the nose or face for which temporary removal of the Face Covering is necessary to perform the Service.

C. Exemptions. All first responders, emergency management personnel, emergency dispatchers, law enforcement personnel, and any individuals performing essential government functions are categorically exempt from this Order. Further, nothing in this Order shall prohibit any individual from performing or accessing “Essential Governmental Functions.” Essential Government Functions means all services needed to ensure the continuing operation of any

government agencies, including schools, and provide for the health, safety and welfare of the public. All Essential Governmental Functions should be performed in compliance with Social Distancing Requirements as defined this Section, to the extent possible.

**Section Three. Violation and Remedies.**

Violation of any provision of this Order constitutes an imminent threat, creates an immediate menace to public health, and shall be considered a violation of Ordinance No. 9315. All remedies prescribed by the provisions of this Order shall be cumulative, and the use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions of this Order.

**Section Four. Penalty.**

Violation of any provision of this Order may result (1) in the suspension or revocation of the Certificate of Occupancy and/or Business License for the offending business or concern in accordance with the Code of the City of North Kansas City, Missouri; and/or (2) in a fine as provided for in Ordinance No. 9315.

**Section Five. Effective Date.**

This Fifth Amended Order herein shall take effect at 12:01 a.m. on Wednesday, July 1, 2020 and shall expire at 12:59 p.m. on Sunday, July 12, 2020 unless and until it is extended, rescinded, superseded, or amended in writing prior thereto.

Authenticated as Adopted

This 30<sup>th</sup> day of June, 2020.

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Don Stielow  
*Mayor*

Filed with me, the City Clerk of the City of North Kansas City, Missouri, this \_\_\_\_ day of June, 2020, by Mayor Don Stielow, whose signature I hereby attest.

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Crystal Doss, *City Clerk*