

**IN THE DISTRICT COURT OF
DOUGLAS COUNTY, NEBRASKA**

**NEBRASKA DEPARTMENT OF
HEALTH AND HUMAN
SERVICES; DR. GARY J.
ANTHONE, in his official
capacity as the Director of
Public Health and Chief Medical
Officer of the Nebraska
Department of Health and
Human Services; DOUGLAS J.
PETERSON, Attorney General of
the State of Nebraska,**

Plaintiffs,

v.

**DR. LINDSAY HUSE, in her
official capacity as Health
Director of the Douglas County
Board of Health and in her
official capacity as the
purported “Health Director” of
the City of Omaha; DOUGLAS
COUNTY BOARD OF HEALTH;
CHRIS RODGERS, in his official
capacity as President of the
Douglas County Board of
Health; JOHN WADE, in his
official capacity as Vice
President of the Douglas County
Board of Health; JEANEE
WEISS, in her official capacity
as Secretary of the Douglas
County Board of Health; DR.
ANDREA JONES, in her official
capacity as a member of the
Douglas County Board of
Health; DR. KEYONNA KING, in
her official capacity as a**

Case No. CI 22-_____

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

member of the Douglas County Board of Health; DR. STUART J. MCNALLY, in his official capacity as a member of the Douglas County Board of Health; DR. MARLENE WILKEN, in her official capacity as a member of the Douglas County Board of Health; SELENE ESPINOZA, in her official capacity as a member of the Douglas County Board of Health; BEN GRAY, in his official capacity as a member of the Douglas County Board of Health; DOUGLAS COUNTY HEALTH DEPARTMENT; CITY OF OMAHA; JEAN STOTHERT, in her official capacity as Mayor of the City of Omaha; DOUGLAS COUNTY; DOUGLAS COUNTY SHERIFF'S OFFICE; THOMAS J. WHEELER, in his official capacity as the Douglas County Sheriff; OMAHA POLICE DEPARTMENT; TODD SCHMADERER in his official capacity as the Chief of Police of the Omaha Police Department,

Defendants.

Plaintiffs, Nebraska Department of Health and Human Services, Dr. Gary J. Anthone, in his official capacity as the Director of Public Health and Chief Medical Officer of the Nebraska Department of Health and Human Services, and Douglas J. Peterson, Attorney General of the State of Nebraska, for their causes of action against the Defendants, state and allege as follows:

INTRODUCTION

1. On January 11, 2022, Defendant Dr. Lindsay Huse (Dr. Huse) unilaterally and unlawfully issued a measure entitled “COVID-19 Prevention Order – Mask Requirement.”

2. Plaintiffs bring this lawsuit to challenge that order, which Plaintiffs refer to as the “measure,” “mandate,” or “mask mandate.”

3. The mask mandate is unlawful because, as alleged herein, the mandate exceeds Dr. Huse’s authority under the Omaha Municipal Code, the mandate conflicts with applicable state law, the portions of the Omaha Municipal Code that Dr. Huse invokes to justify her mandate are preempted by state law, and the mandate violates Article XI, Section 5 of the Nebraska Constitution.

PARTIES

4. Plaintiff Nebraska Department of Health and Human Services (DHHS) is an agency of the State of Nebraska.

5. DHHS has statutory authority under Neb. Rev. Stat. § 71-1631(10) to approve or disapprove “measures” issued by county health departments “to arrest the progress” of a “contagious or infectious disease.”

6. Plaintiff Dr. Gary J. Anthone (Dr. Anthone) is the duly appointed Director of Public Health and Chief Medical Officer of DHHS.

7. Dr. Anthone is the DHHS official that, pursuant to Neb. Rev. Stat. § 71-1631, approves or disapproves “measures” issued by county health departments “to arrest the progress” of a “contagious or infectious disease.”

8. Plaintiff Douglas J. Peterson is the duly elected and authorized Attorney General of the State of Nebraska.

9. The Attorney General has the authority to enforce the laws of the State of Nebraska.

10. Defendant Dr. Huse is the duly appointed Health Director of the Douglas County Health Department. She is being sued in her official capacity as the Health Director of the Douglas County Health Department, and to the extent she has an official capacity as the Health Director for the City of Omaha, she is being sued in that official capacity as well.

11. Defendant Douglas County Health Department is a county health department established by the County Board of Douglas County and approved by DHHS.

12. The challenged mask mandate authorizes the Douglas County Health Department to enforce it.

13. Defendant Douglas County Board of Health is a county health board established by the County Board of Douglas County pursuant to Neb. Rev. Stat. § 71-1630(1).

14. Defendant Chris Rodgers is the Board President of the Douglas County Board of Health. He is being sued in his official capacity.

15. Defendant John M. Wade is the Board Vice President of the Douglas County Board of Health. He is being sued in his official capacity.

16. Defendant Jeanee Weiss is the Board Secretary of the Douglas County Board of Health. She is being sued in her official capacity.

17. Defendant Dr. Andrea Jones is a member of the Douglas County Board of Health. She is being sued in her official capacity.

18. Defendant Dr. Keyonna King is a member of the Douglas County Board of Health. She is being sued in her official capacity.

19. Defendant Dr. Stuart McNally is a member of the Douglas County Board of Health. He is being sued in his official capacity.

20. Defendant Dr. Marlene Wilken is a member of the Douglas County Board of Health. She is being sued in her official capacity.

21. Defendant Selene Espinoza is a member of the Douglas County Board of Health. She is being sued in her official capacity.

22. Defendant Ben Gray is a member of the Douglas County Board of Health. He is being sued in his official capacity.

23. Defendant City of Omaha is a municipal corporation and city of the metropolitan class. Neb. Rev. Stat. § 14-101; Omaha, Neb., Mun. Code, part I, art. I, § 1.01.

24. The challenged mask mandate authorizes law enforcement to enforce it.

25. Defendant Jean Stothert is the Mayor of the City of Omaha. As such, she is the chief executive of the City. She is being sued in her official capacity.

26. Defendant Douglas County is a political subdivision of the State of Nebraska and oversees the administration of the Douglas County Sheriff's Office.

27. Defendant Douglas County Sheriff's Office is the law enforcement agency for Douglas County.

28. Defendant Thomas J. Wheeler is the Douglas County Sheriff. He is being sued in his official capacity.

29. Defendant Omaha Police Department is the law enforcement agency for the City of Omaha.

30. Defendant Todd Schmaderer is the Chief of Police of the Omaha Police Department. He is being sued in his official capacity.

JURISDICTION AND VENUE

31. The Court has subject matter jurisdiction over this action for declaratory judgment under Neb. Rev. Stat. § 24-302, and the Nebraska Uniform Declaratory Judgments Act, Neb. Rev. Stat. §§ 25-

21,149 to 25-21,164.

32. The Court also has subject matter jurisdiction over this action for injunctive relief pursuant to Neb. Rev. Stat. §§ 25-1062 to 25-1080.

33. Plaintiffs DHHS and Dr. Anthone have standing to bring this action because the mask mandate is an attempt to evade their statutory authority under Neb. Rev. Stat. § 71-1631(10) to approve or disapprove “measures” issued by county health departments “to arrest the progress” of a “contagious or infectious disease.”

34. Plaintiff Peterson is authorized to bring this action pursuant to the statutory authority granted to him under Neb. Rev. Stat. §§ 71-506 & 84-203 and the common law authority vested in the Attorney General.

35. Venue is appropriate pursuant to Neb. Rev. Stat. § 25-403.01 because Douglas County is the county where Plaintiffs’ causes of action arose.

FACTS

36. Pursuant to Neb. Rev. Stat. § 71-502, DHHS “*shall have supervision and control of all matters relating to necessary communicable disease control* and shall adopt and promulgate such proper and reasonable general rules and regulations as will best serve to promote communicable disease control throughout the state and prevent the introduction or spread of disease.” Neb. Rev. Stat. § 71-502 (emphasis added).

37. DHHS properly adopted such rules and regulations at Title 173 Neb. Admin. Code Ch. 6.

38. In March 2020, the COVID-19 pandemic reached Nebraska.

39. In response to the COVID-19 pandemic, DHHS and Dr. Anthone exercised their authority to issue various Directed Health Measures (DHMs) pursuant to Neb. Rev. Stat. § 71-502 and 81-601, as

well as the rules and regulations contained in Title 173 Neb. Admin. Code Ch. 6, to prevent and limit the spread of COVID-19 throughout the State of Nebraska.

40. Local public health departments are authorized to issue their own rules and regulations within their jurisdictions, as long as those rules and regulations are approved by DHHS. Neb. Rev. Stat. § 71-1631(7).

41. Pursuant to Neb. Rev. Stat. § 71-1631(7), the Douglas County Board of Health has previously promulgated rules and regulations concerning public health and the prevention of communicable diseases within its jurisdiction, which were approved by DHHS.

42. Local public health departments are authorized to adopt measures to halt the progress of communicable diseases only when those measures are approved by DHHS. Neb. Rev. Stat. § 71-1631(10).

43. In August 2020, the Omaha City Council passed an ordinance generally requiring “[a]ny individual or entity which maintains premises that are open to the general public including, but not limited to, educational institutions, [to] require all individuals age five and older to wear a face covering over their mouth and nose while indoors.” Omaha, Neb., Mun. Code ch. 12, art. III, § 12-44.

44. The mandate contained a sunset provision, which the City Council extended several times. Omaha, Neb., Mun. Code ch. 12, art. III, § 12-51. *See also* Ord. No. 42309, § 2, 8-11-20; Ord. No. 42310, § 2, 9-1-20; Ord. No. 42337, § 2, 10-6-20; Ord. No. 42368, § 2, 11-10-20; Ord. No. 42435, § 2, 2-9-21.

45. The City Council allowed the mandate to expire and terminate at 11:59 p.m. on May 25, 2021. Omaha, Neb., Mun. Code ch. 12, art. III, § 12-51.

46. Dr. Adi Pour, the previous Health Director of the Douglas County Health Department, retired from the Douglas County Health

Department at the end of June 2021, and Dr. Huse was appointed as her replacement.

47. On August 24, 2021, Dr. Huse requested DHHS approval for a mandate that would allow herself, as the Director of the Douglas County Health Department, and the Douglas County Board of Health to require face coverings for *both* residents of Douglas County and residents of the City of Omaha.

48. The draft DHM included recitals recognizing that DHHS approval was required in order to implement the proposed mask mandate. It also cited Neb. Rev. Stat. §§ 71-501, 71-1631(7), 71-1631(10), and Omaha Municipal Code Chapter 12 as authority for its restrictions.

49. DHHS denied Dr. Huse's request for approval of the mask mandate.

50. Following DHHS' denial of Dr. Huse's request, no action was taken by any of the various Defendants to implement a mask mandate in Douglas County or the City of Omaha until January 11, 2022.

51. On January 11, 2022, Dr. Huse issued a measure entitled "COVID-19 Prevention Order – Mask Requirement," which contains the mask mandate at issue in this lawsuit. A true and accurate copy of that document is attached hereto as Exhibit A. Sometime thereafter, Dr. Huse issued a revised version of the "COVID-19 Prevention Order – Mask Requirement," which clarified some of the provisions of the original order. A true and accurate copy of this mandate is attached hereto as Exhibit B.

52. Dr. Huse purported to issue that mask mandate in her alleged capacity as the City Health Director (rather than the County Health Director).

53. The mask mandate relies exclusively on the Omaha Municipal Code as authority for its restrictions and penalties. Dr. Huse claims that Omaha Municipal Code §§ 12-1, 12-21, 12-22, & 12-24—

which, by their plain terms, afford power to the County Health Director (not the City Health Director)—give her authority to issue this mandate as the City Health Director.

54. Mirroring the operative language from the mask mandate ordinance that the City Council adopted in August 2020 and the proposed order that Dr. Huse sent to DHHS in August 2021, the January 11, 2022 mask mandate directs that, with certain enumerated exceptions, “[a]ny individual or entity which maintains premises open to the general public, including but not limited to educational institutions, shall require all individuals aged five (5) and older to wear a face covering over their mouth and nose while indoors.”

55. Though Dr. Huse says she issued this mask mandate in her alleged capacity as City Health Director (not County Health Director), the order directs the actions of the Douglas County Health Department by providing that “[i]n the event of noncompliance with the terms of this Order, staff from the Douglas Health Department will aid [her] in inspection and enforcement.”

56. The mandate announces criminal penalties. Violators “shall be guilty of a Misdemeanor for each offense and subjected to a fine of up to \$500.00, or by imprisonment not to exceed six months, or both such fine and imprisonment in the discretion the court. Each instance of violation of this Order may be considered a separate offense.” This means that owners of nonexempt businesses that do not require masks may face six months of imprisonment for each day that they are not in compliance with the mask mandate.

57. On January 11, 2022, the same day that Dr. Huse issued the mask mandate, the Attorney General sent her a letter about this issue.

58. The letter explained that “pursuant to Neb. Rev. Stat. § 71-1631(10), [Dr. Huse does] not have authority to unilaterally issue [this] mandate without first obtaining the approval of DHHS.”

59. The letter also informed Dr. Huse that the Attorney General “plans to file suit seeking to have the [order] declared invalid and to enjoin the mask mandate from being enforced.”

60. The following day, January 12, 2022, Plaintiffs filed this lawsuit.

61. Plaintiffs are entitled to injunctive relief that enjoins Defendants from enforcing the mask mandate.

62. Plaintiffs are likely to succeed on the merits of their claims.

63. Plaintiffs are currently suffering irreparable harm that cannot be rectified by remedies available at law.

64. That irreparable harm includes the mask mandate’s evasion of DHHS’s and Dr. Anthone’s right under Neb. Rev. Stat. § 71-1631(10) to approve or disapprove “measures” issued by county health departments “to arrest the progress” of a “contagious or infectious disease.”

65. That irreparable harm includes the state’s interest in enforcing its duly enacted statutes that ensure DHHS oversight of measures issued by county health departments to arrest the progress of a contagious or infectious disease.

66. That harm includes the state’s interest in ensuring that a local health official cannot unilaterally and without limitation impose infectious-disease control measures.

67. That harm includes the illegitimate threat of criminal punishment—including imprisonment—that the mask mandate imposes on the citizens of Nebraska.

68. The balance of equities and public interest weigh in favor of granting an injunction.

69. The public interest weighs in favor of stopping government officials from acting unlawfully even when they are pursuing public health goals.

CAUSES OF ACTION

First Cause of Action – The mask mandate exceeds Defendants’ authority under the Omaha Municipal Code

70. Plaintiffs incorporate all prior allegations within this cause of action.

71. Cities and other political subdivisions exceed their authority when they act contrary to the power prescribed in local ordinances.

72. Dr. Huse purports to enact her mask mandate in the capacity of City Health Director, but the ordinance provisions she invokes—Omaha Municipal Code §§ 12-01, 12-21, 12-22, & 12-24—empower the County Health Director (not a City Health Director) to act.

73. By supposedly acting in the capacity of City Health Director when issuing the mask mandate, Dr. Huse usurped authority that the ordinance allegedly bestows upon the County Health Director.

74. Additionally, Dr. Huse’s mask mandate relies on powers conveyed in general ordinances, but those ordinances conflict with specific ordinances that address the topic of COVID-19 mask mandates in particular.

75. Dr. Huse tries to create a COVID-19 mask mandate by exercising general authority given to her under Omaha Municipal Code §§ 12-01, 12-21, 12-22, & 12-24.

76. But a specific set of ordinances also found in Chapter 12 of the Omaha Municipal Code addresses the “prevention of COVID-19” and explicitly references facial coverings. *See* Omaha, Neb., Mun. Code ch. 12, art. III, § 12-41–12-52.

77. This masking requirement expired at 11:59 p.m. on May 25, 2021, because it was not extended by ordinance of the City Council.

78. Because the specific ordinances explicitly provide that the COVID-19 mask mandate ended in May 2021, Dr. Huse cannot invoke the general ordinances to resurrect a mask mandate.

Second Cause of Action – The mask mandate conflicts with state law

79. Plaintiffs incorporate all prior allegations within this cause of action.

80. Because the ordinances that the mask mandate relies upon empower only the County Health Director (not a City Health Director) to act, any action under those ordinances necessarily is the action of the Douglas County Health Department.

81. But state law—specifically Neb. Rev. Stat. § 71-1631(10)—provides that county health departments may only “adopt measures . . . to arrest the progress” of an “contagious or infectious disease” when they act through their “board of health” with “the approval of [DHHS].”

82. Here, however, Dr. Huse’s unilateral order did not come from the board of health nor did it receive DHHS approval.

83. Thus, her order directly conflicts with Section 71-1631(10) and is illegal.

84. In addition, Neb. Rev. Stat. § 71-1632 establishes the powers of a health director of a county health department, but none of them include the authority to create measures aiming to prevent or stop the spread of infectious diseases.

85. Because Dr. Huse purports to exercise authority beyond that prescribed under state law, she has exceeded her legitimate authority.

Third Cause of Action – The mask mandate relies on ordinances that are preempted by state law

86. Plaintiffs incorporate all prior allegations within this cause of action.

87. Omaha Municipal Code §§ 12-1, 12-21, 12-22, & 12-24 supposedly authorize the County Health Director to take action to prevent the spread of infectious diseases.

88. By purporting to allow a local county health official to unilaterally issue measures to respond to a communicable disease, these ordinances are preempted by state law.

89. Conflict preemption applies to these ordinances.

90. These ordinances supposedly authorize the County Health Director to unilaterally create infectious-disease prevention measures, but in so doing, these ordinances directly conflict with Neb. Rev. Stat. § 71-1631(10)'s requirement that DHHS must approve any such measures.

91. Field preemption also applies to these ordinances.

92. The legislature has given broad oversight of infectious-disease prevention measures to DHHS.

93. The extensive oversight and control afforded DHHS indicates that, subject to an exception for joint city-county boards of health that does not apply in this case, DHHS approval is necessary for local public health departments or their officials to adopt measures that seek to control communicable diseases.

94. Because these ordinances are preempted by state law, Defendants cannot rely on them to issue the mask mandate.

Fourth Cause of Action – The mask mandate violates Article XI, Section 5 of the Nebraska Constitution.

95. Plaintiffs incorporate all prior allegations within this cause of action.

96. City powers exercised under home-rule charters are “subject to the Constitution and laws of the state.” Neb. Const. art. XI, § 5.

97. As explained above, the mask mandate violates state law and thereby also violates Article XI, Section 5 of the Nebraska Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray:

A. For a judgment declaring the operative “COVID-19 Prevention Order – Mask Requirement” void and unlawful;

B. For a judgment declaring that Dr. Huse was without jurisdiction or authority to issue the operative “COVID-19 Prevention Order – Mask Requirement” and that her issuance of that mandate is therefore void and unlawful;

C. For temporary and permanent injunctive relief enjoining Defendants from enforcing any and all operative “COVID-19 Prevention Order – Mask Requirement”;

D. For temporary and permanent injunctive relief enjoining Defendants from issuing any subsequent public health measures in violation of state law; and

E. For such other, further, and different relief as shall be just and equitable.

Respectfully submitted this 12th day of January, 2022.

**NEBRASKA DEPARTMENT OF
HEALTH AND HUMAN
SERVICES; DR. GARY J.
ANTHONE, in his official capacity
as the Director of Public Health
and Chief Medical Officer of the
Nebraska Department of Health
and Human Services; and
DOUGLAS J. PETERSON,
Attorney General of the State of
Nebraska, Plaintiffs.**

By: DOUGLAS J. PETERSON
Attorney General, #18146

By: */s/ Jennifer A. Huxoll*
Jennifer A. Huxoll, Bar #20406
James A. Campbell, Bar #26934
Phoebe L. Gydesen, Bar #26333
Justin J. Hall, Bar #26161
Timothy M. Young, Bar #26880
Assistant Attorneys General

OFFICE OF THE ATTORNEY GENERAL
2115 State Capitol
Lincoln NE 68509-8920
Tel. (402) 471-2682
Fax. (402) 471-4725
Jennifer.Huxoll@nebraska.gov
Jim.Campbell@nebraska.gov
Phoebe.Gydesen@nebraska.gov
Tim.Young@nebraska.gov

Attorneys for Plaintiffs.

CITY OF OMAHA

COVID-19 Prevention Order – Mask Requirement

Issued by City Health Director Dr. Lindsay Huse

WHEREAS, pursuant to City of Omaha Municipal Code §12-1, the Director of the Douglas County Health Department acts as the Health Director for the City of Omaha (“Director”) and the Director has such powers as are detailed in Chapter 12 of the Omaha Municipal Code; and,

WHEREAS, the Novel Coronavirus (COVID-19) and its variants have impacted and continue to dramatically impact the citizens of the City of Omaha, Nebraska, and under Omaha Municipal Code §12-21, the Director is obligated to take all measures necessary to prevent the introduction of malignant, contagious, and infectious diseases within the City of Omaha; and,

WHEREAS, pursuant to Omaha Municipal Code §12-22, the Director has responsibility to generally oversee and to promote the health of the City of Omaha and its citizens; and,

WHEREAS, pursuant to Omaha Municipal Code §12-24, Director has the authority to issue orders, regulations, and instructions when Director feels the City is afflicted or threatened with an epidemic of contagious or infectious diseases and when such orders, regulations, and instructions would be effective in the prevention, removal, or limiting of such disease; and,

WHEREAS, pursuant to Omaha Municipal Code §12-24, any such order, regulation, or instruction that is entered by Director remains in full force and effect until revoked by the Director; and,

WHEREAS, having reviewed information from the U.S. Department of Health and Human Services Centers for Disease Control and Prevention (“CDC”), World Health Organization (“WHO”), local public health departments, treating healthcare providers, and healthcare facilities, and other public health, security, and law enforcement authorities; having consulted with medical and communicable disease control personnel of the Douglas County Health Department; and having considered directives and guidelines issued by the CDC and other public health authorities, Director finds and orders as follows:

- 1.) Information from the WHO, the CDC, the Douglas County Health Department, local public health departments throughout Nebraska, and members of the City of Omaha and Douglas County medical community indicates that citizens of the City of Omaha have been and will continue to be exposed due to community transmissions of COVID-19.
- 2.) That exposure to COVID-19 and its Delta and Omicron variants present a risk of death or serious long-term disability; the exposure is widespread and poses significant risk of harm, including death, to people in the general population; there is a particular subset of the population that is more vulnerable to the threat and thus an increased risk; and the threat is from a novel infectious disease.

- 3.) That the imposition of an order and regulation under the authority of Omaha Municipal Code §12-23 and §12-24 is necessary due to the threat posed to members of the public by insuring that continued interaction between individuals is done in a manner to limit the transmission of COVID-19.
- 4.) The manner in which the spread of COVID-19 cases in the City of Omaha has occurred imposes an unacceptable risk to the health, safety, and welfare of the citizens of the City of Omaha and an order is necessary to continue to prevent or limit the transmission of COVID-19.
- 5.) The introduction of the Omicron variant into the City of Omaha has caused unprecedented levels of community spread, positive case counts, and represents both a current and future strain on the medical and hospital systems of the City and their staff.
- 6.) Director Dr. Rochelle Walensky of the CDC as well as the Metro Omaha Medical Society, and contagious disease experts and physicians from the University of Nebraska Medical Center have concluded that the wearing of face coverings by every individual while in public is one of the best methods to slow and stop the spread of COVID-19 and that entry of an order requiring the wearing of masks will be effective against public health threats in the City of Omaha.

THEREFORE, Dr. Lindsay Huse, as the Health Director for the City of Omaha, hereby enters the following Order which will go into effect on January 12, 2022 at 12:01 A.M. and will remain in effect until positive case counts for the City of Omaha are below 200 persons per 100,000 on a seven (7) day total and hospital capacity is maintained at or below 85% for seven (7) consecutive days, unless renewed, extended, or terminated by subsequent order. This Order will be reviewed at minimum every four (4) weeks for a determination of the Director on extension or expiration.

- 1.) Any individual or entity which maintains premises open to the general public, including but not limited to educational institutions, shall require all individuals aged five (5) and older to wear a face covering over their mouth and nose while indoors unless the individual maintains at least six (6) feet of separation at all times from anyone who is not their household member, except face coverings will not be required if the individual:
 - (a) Is seeking federal, state, city, municipal, or county Government services;
 - (b) Is seated at a bar or restaurant to eat or drink, or while immediately consuming food or beverages;
 - (c) Is engaged in exercise;
 - (d) Is engaged in an occupation preventing the wearing of a face covering;
 - (e) Is obtaining a service or purchasing goods or services that require the temporary removal of the face covering;
 - (f) Is providing a speech, lecture, or broadcast, or officiating a religious service, to an audience so long as six (6) feet of distancing from other individuals is maintained;

- (g) Cannot otherwise wear a face covering because of a medical condition, a mental health condition, or a disability that prevents the wearing of a face covering; and/or
- (h) The individual is under two (2) years of age.

2.) This Order shall not apply to courts of law, medical providers, facilities, or pharmacies; public utilities or essential federal, state, county, and city operations; continuity of business operations; logistics/distribution centers; congregate living settings; group homes and residential drug and/or mental health treatment facilities; shelters; airport travel; election offices; polling places on an election day; or to dwelling units. However, these excepted settings shall, to the extent possible, observe physical distancing practices by providing for the maintaining of at least six (6) feet of separation between individuals and all other applicable local, state, and federal guidelines for disease prevention and disinfection of surfaces.

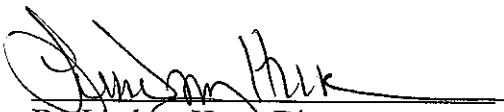
In the event of noncompliance with the terms of this Order, staff from the Douglas County Health Department will aid the Health Director in inspection and enforcement. If compliance cannot be had in this manner, law enforcement will aid the Health Director in enforcement.

Failure to comply with this Order will result in legal action for enforcement by civil and/or criminal remedies.

Pursuant to Omaha Municipal Code § 1-10, any person who is found to have violated any provisions of this Order within the City limits of the City of Omaha shall be guilty of a Misdemeanor for each offense and subjected to a fine of up to \$500.00, or by imprisonment not to exceed six months, or both such fine and imprisonment in the discretion of the court. Each instance of violation of this Order may be considered a separate offense.

In addition to any penalty sought or obtained under this Order or other applicable law, the City Attorney may institute injunctive or other appropriate civil proceedings necessary to obtain compliance or to abate any nuisance rules resulting from violations of this Order/Regulation.

On behalf of the City of Omaha:


Dr. Lindsay Huse, Director

1/11/22
Date

CITY OF OMAHA

COVID-19 Prevention Order – Mask Requirement

Issued by City Health Director Dr. Lindsay Huse

WHEREAS, pursuant to City of Omaha Municipal Code §12-1, the Director of the Douglas County Health Department acts as the Health Director for the City of Omaha (“Director”) and the Director has such powers as are detailed in Chapter 12 of the Omaha Municipal Code; and,

WHEREAS, the Novel Coronavirus (COVID-19) and its variants have impacted and continue to dramatically impact the citizens of the City of Omaha, Nebraska, and under Omaha Municipal Code §12-21, the Director is obligated to take all measures necessary to prevent the introduction of malignant, contagious, and infectious diseases within the City of Omaha; and,

WHEREAS, pursuant to Omaha Municipal Code §12-22, the Director has responsibility to generally oversee and to promote the health of the City of Omaha and its citizens; and,

WHEREAS, pursuant to Omaha Municipal Code §12-24, Director has the authority to issue orders, regulations, and instructions when Director feels the City is afflicted or threatened with an epidemic of contagious or infectious diseases and when such orders, regulations, and instructions would be effective in the prevention, removal, or limiting of such disease; and,

WHEREAS, pursuant to Omaha Municipal Code §12-24, any such order, regulation, or instruction that is entered by Director remains in full force and effect until revoked by the Director; and,

WHEREAS, having reviewed information from the U.S. Department of Health and Human Services Centers for Disease Control and Prevention (“CDC”), World Health Organization (“WHO”), local public health departments, treating healthcare providers, and healthcare facilities, and other public health, security, and law enforcement authorities; having consulted with medical and communicable disease control personnel of the Douglas County Health Department; and having considered directives and guidelines issued by the CDC and other public health authorities, Director finds and orders as follows:

- 1.) Information from the WHO, the CDC, the Douglas County Health Department, local public health departments throughout Nebraska, and members of the City of Omaha and Douglas County medical community indicates that citizens of the City of Omaha have been and will continue to be exposed due to community transmissions of COVID-19.
- 2.) That exposure to COVID-19 and its Delta and Omicron variants present a risk of death or serious long-term disability; the exposure is widespread and poses significant risk of harm, including death, to people in the general population; there is a particular subset of the population that is more vulnerable to the threat and thus an increased risk; and the threat is from a novel infectious disease.

- 3.) That the imposition of an order and regulation under the authority of Omaha Municipal Code §12-23 and §12-24 is necessary due to the threat posed to members of the public by insuring that continued interaction between individuals is done in a manner to limit the transmission of COVID-19.
- 4.) The manner in which the spread of COVID-19 cases in the City of Omaha has occurred imposes an unacceptable risk to the health, safety, and welfare of the citizens of the City of Omaha and an order is necessary to continue to prevent or limit the transmission of COVID-19.
- 5.) The introduction of the Omicron variant into the City of Omaha has caused unprecedented levels of community spread, positive case counts, and represents both a current and future strain on the medical and hospital systems of the City and their staff.
- 6.) Director Dr. Rochelle Walensky of the CDC as well as the Metro Omaha Medical Society, and contagious disease experts and physicians from the University of Nebraska Medical Center have concluded that the wearing of face coverings by every individual while in public is one of the best methods to slow and stop the spread of COVID-19 and that entry of an order requiring the wearing of masks will be effective against public health threats in the City of Omaha.

THEREFORE, Dr. Lindsay Huse, as the Health Director for the City of Omaha, hereby enters the following Order which will go into effect on January 12, 2022 at 12:01 A.M. and will remain in effect until positive case counts for the City of Omaha are below 200 persons per 100,000 on a seven (7) day total and hospital capacity is maintained at or below 85% for seven (7) consecutive days, unless renewed, extended, or terminated by subsequent order. This Order will be reviewed at minimum every four (4) weeks for a determination of the Director on extension or expiration.

- 1.) Any individual or entity which maintains premises open to the general public, including but not limited to educational institutions, shall require all individuals aged five (5) and older to wear a face covering over their mouth and nose while indoors unless the individual maintains at least six (6) feet of separation at all times from anyone who is not their household member, except face coverings will not be required if the individual:
 - a) Is seeking federal, state, city, municipal, or county Government services;
 - b) Is seated at a bar or restaurant to eat or drink, or while immediately consuming food or beverages;
 - c) Is engaged in exercise;
 - d) Is engaged in an occupation preventing the wearing of a face covering;
 - e) Is obtaining a service or purchasing goods or services that require the temporary removal of the face covering;
 - f) Is providing a speech, lecture, or broadcast, or officiating a religious service, to an audience so long as six (6) feet of distancing from other individuals is maintained;
 - g) Is participating in a religious service;

- h) Cannot otherwise wear a face covering because of a medical condition, a mental health condition, or a disability that prevents the wearing of a face covering; and/or
 - i) The individual is under five (5) years of age.
- 2.) This Order shall not apply to courts of law, medical providers, facilities, or pharmacies; public utilities or essential federal, state, county, and city operations; continuity of business operations; logistics/distribution centers; congregate living settings; group homes and residential drug and/or mental health treatment facilities; shelters; airport travel; election offices; polling places on an election day; or to dwelling units. However, these excepted settings shall, to the extent possible, observe physical distancing practices by providing for the maintaining of at least six (6) feet of separation between individuals and all other applicable local, state, and federal guidelines for disease prevention and disinfection of surfaces.
- 3.) Any individual or entity which maintains premises that are open to the general public, including but not limited to educational institutions, must post one or more signs that are visible to all persons – including workers, customers, and visitors – instructing them to wear face coverings as required by this Order.
- 4.) For purposes of this Article, the following terms are defined as follows:
 - a.) Face Covering. – A face covering is defined as a covering which, when worn properly, must cover the nose and mouth completely and can include a paper or disposable face mask, a cloth face mask, or a religious face covering. Medical-grade masks and respirators are sufficient face coverings, but to preserve adequate supplies, their purchase and use is discouraged for those who do not work in a health care setting or in other occupations that require medical-grade personal protective equipment. Masks that incorporate a valve designed to facilitate easy exhaling, mesh masks, or masks with openings, holes, visible gaps in the design or material, or vents are not sufficient face coverings because they allow exhaled droplets to be released into the air.
 - b.) Premises That Are Open to the General Public. – Premises that are open to the general public are broadly defined to include entities that employ or engage workers, including private-sector entities, public-sector entities, non-profit entities, regular commercial or business establishments, private clubs, religious centers or buildings, public transportation (including buses, taxis, ride-sharing vehicles, or vehicles used for business purposes), and any place which is generally open to the public, including educational institutions and daycare facilities.

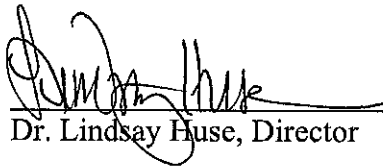
In the event of noncompliance with the terms of this Order, staff from the Douglas County Health Department will aid the Health Director in inspection and enforcement. If compliance cannot be had in this manner, law enforcement will aid the Health Director in enforcement.

Failure to comply with this Order will result in legal action for enforcement by civil and/or criminal remedies.

Pursuant to Omaha Municipal Code § 1-10, any person who is found to have violated any provisions of this Order within the City limits of the City of Omaha shall be guilty of a Misdemeanor for each offense and subjected to a fine of up to \$500.00, or by imprisonment not to exceed six months, or both such fine and imprisonment in the discretion of the court. Each instance of violation of this Order may be considered a separate offense.

In addition to any penalty sought or obtained under this Order or other applicable law, the City Attorney may institute injunctive or other appropriate civil proceedings necessary to obtain compliance or to abate any nuisance rules resulting from violations of this Order/Regulation.

On behalf of the City of Omaha:



Dr. Lindsay Huse, Director

1/11/22
Date