



## Legislation Text

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**File #:** 220025, **Version:** 1

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### ORDINANCE NO. 220025

Establishing a requirement for face coverings or masks at schools where children in grades K-12 attend class and on school buses with certain exceptions; appropriating \$1,000.00 from the Unappropriated Fund Balance of the Health Levy Fund; designating requisitioning authority; and recognizing this ordinance as having an accelerated effective date.

WHEREAS, on March 12, 2020, a proclamation of a state of emergency was issued to allow the City of Kansas City to take measures to reduce the possibility of exposure to COVID-19 and promote the health and safety of Kansas City residents; and

WHEREAS, COVID-19 spreads between people who are in contact with one another or present in shared spaces and a gathering of individuals without necessary mitigation for the spread of infection will pose a risk of the spread of infectious disease; and

WHEREAS, as of January 6, 2022, the Centers for Disease Control (“CDC”) recognizes the Delta variant of COVID-19 as the predominant variant of the virus in the United States. The CDC reports the Delta variant is “highly contagious, more than 2x as contagious as previous variants” and that “the Delta variant might cause more severe illness than previous variants.” In light of these facts, the CDC recommends “layered prevention strategies, including wearing masks” to reduce the transmission of the Delta variant; and

WHEREAS, on December 20, 2021, the CDC identified the Omicron variant has having the potential for a rapid increase in COVID-19 infections. The CDC predicts a “steep epidemic trajectory[y] that would require expedient public health action to prevent severe impacts on the health of individuals and the healthcare system.” Although the CDC reports that Omicron infection may be less severe than previous infection, “given the likely increase in number of infections, the absolute numbers of people with severe outcomes could be substantial;” and

WHEREAS, as of January 6, 2022, worldwide COVID-19 cases have reached approximately 298 million with approximately 5.47 million resulting deaths, and COVID-19 cases in the United States have reached approximately 57.7 million with 831,000 resulting deaths; and

WHEREAS, as of January 6, 2022, the Mid America Regional Council (“MARC”) confirmed 281,039 total cases of COVID-19 in Kansas City metro-wide, with approximately 3,476 deaths from COVID-19 in Kansas City metro-wide; and

WHEREAS, as of January 6, 2022, MARC reports that all 9 counties in the Kansas City metro region are at a “high” level of community transmission as defined by the CDC, with 5 of 9 jurisdictions being at least 5 times the threshold for this rating; and

WHEREAS, as of January 6, 2022, MARC reports new hospital admissions of patients with COVID-19 are 195.43 average per day, compared with 151.29 the previous week and 157.57 the week prior; and

WHEREAS, as of January 6, 2022, MARC reports that chief medical officers in the region have reported worsening capacity issues driven by staffing shortages. These hospitals are reporting an anticipated staffing shortage within the week of 37%, up from 33% the two weeks prior. MARC acknowledges that this metric does not capture the increasing severity of the shortage; and

WHEREAS, as of January 6, 2022, MARC reports that hospital resource utilization remains high, with hospitals reporting 91.25% of ICU beds occupied; and

WHEREAS, as of January 6, 2022, MARC reports that, within its Missouri jurisdictions, only 14.44% of children 5-11 have been fully vaccinated, whereas 40.06% of children 12-17 have been fully vaccinated. This is in contrast to 57.57% of adults aged 18-64 who have been vaccinated and 86.24% of adults 65+ who have been vaccinated. In the absence of widespread vaccination, the best method left to protect the children of Kansas City in school is by requiring the wearing of face coverings and masks; and

WHEREAS, part of the discrepancy between vaccination rates in children 5-11 and those 12-17 can be explained by the recent U.S. Food and Drug Administration emergency use authorization of the Pfizer COVID-19 vaccine for children 5-11 occurring on October 29, 2021, and endorsed by the CDC on November 2, 2021; and

WHEREAS, K-12 students benefit from in-person learning and interactions with others; and

WHEREAS, under state law and in general, children between the ages of 7 and 17 are required to attend school; and

WHEREAS, safely attending in-person classes and keeping open public and private schools where children in grades K-12 attend class is of the highest priority for students, parents, schools, and the entire community; and

WHEREAS, CDC recommends universal indoor masking for all students, staff, teachers, and visitors to K-12 schools regardless of vaccination status; and

WHEREAS, wearing face masks while indoors at school will protect the health of K-12 students; and

WHEREAS, wearing a mask or other face covering in school gets and keeps children in school and is an effective means to protect students and mitigate the spread of COVID-19 while in school; and

WHEREAS, there is no current masking order in place within the City of Kansas City, Missouri, with Ordinance No. 211076 having expired on January 1, 2022; and

WHEREAS, a short delay in effective date is needed to give schools and school districts sufficient time to notify students, parents, faculty, staff, and visitors, as well as to change website language and take any other

implementing steps needed to effectuate this ordinance; and

WHEREAS, on January 6, 2022, Kansas City Interim Director of Health Frank Thompson, pursuant to RSMo. Section 67.265, submitted an updated report to City Council, attached hereto as Exhibit A, which contains information supporting the need for this ordinance; NOW, THEREFORE,

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. Community Health Guidance

- A. All persons are encouraged to limit exposure by obtaining a federally-approved vaccine and properly wearing a face covering or mask when applicable and maintaining social distancing when indoors at a place of public accommodation. The use of face coverings or masks is recommended in indoor private settings and crowded outdoor settings where there is close contact with other people who may not be fully vaccinated.
- B. As used herein, the terms below shall have the following meanings:
  - 1. A “face covering or mask” means a uniform piece of cloth, fabric, or other material that securely covers a person’s nose and mouth. It is properly worn when it remains affixed in place without the use of one’s hands.
  - 2. “Social distancing” is maintaining at least six-feet of distance from others.

Section 2. Schools

- A. To ensure that schools may operate as safely as possible, a face covering or mask is required for all children, faculty, staff, and visitors while inside a school building where any students through and including 12th grade attend class, unless actively eating or drinking. All persons must wear a face covering or mask when riding on a school bus.
  - 1. As used herein, schools shall not include those owned or operated on behalf of a religious corporation, association, or society.
  - 2. The following individuals are exempt from wearing face coverings or masks:
    - a. Persons under 5 years old;
    - b. Persons with a medical condition, mental health condition or disability that prevents wearing a face covering or mask that, other than in the case of an emergency, have provided documentation of such condition or disability that has been approved by appropriate school officials pursuant to school guidelines. This includes persons with a medical condition for whom wearing a face covering could obstruct breathing or otherwise unable to remove a face covering without assistance, as well as those who are unconscious or incapacitated;

- c. Persons communicating with a person who is deaf or hard of hearing, where the ability to see the mouth is essential for communication; and
  - d. Persons who are alone in a separate room or office, or on the bus.
3. The requirement to wear a mask on a school bus is intended to reflect requirements by the U.S. Department of Transportation (“DOT”) and not preempt federal authority to regulate school busses. Should the DOT rescind the requirement for masks on school busses, this provision will still apply.

Section 3. Violation of any provision of this ordinance constitutes an imminent threat and immediate menace to public health. It shall be unlawful for any person to fail, neglect or refuse to comply with this ordinance, or for any person to otherwise violate or in any manner aid, assist, encourage, or support the commission or perpetration of a violation of this ordinance; and any such person is subject to the general penalty provision of Section 1-17 of the City’s Code of Ordinances.

Section 4. The Interim Director of Health, the Chief of the Kansas City Police Department, and the Chief of the Kansas City Fire Department, or their designees (“Directors”) are, under the Constitutions of the United States and Missouri, the Kansas City Charter and this ordinance, subject to applicable law, authorized to enter all property necessary to enforce laws relating to public health and to provide for the avoidance, suppression or mitigation of disease, and abatement of nuisances and other unhealthy conditions. Upon complaint, or whenever the Directors deem an action carried on or engaged in by any person in the City detrimental to the public health, the Directors shall notify that person to show cause to the City at a time and place to be specified in the notice, why the action should not be discontinued. The notice shall be served before the time specified therein as provided by law.

Section 5. Violation of any provision of this ordinance may result in the suspension or revocation of the Certificate of Occupancy and/or any license or permit issued by the City in accordance with Section 18-23 of the City’s Code of Ordinances.

Section 6. No provision of this ordinance shall be construed to impair the city's right to pursue any other legal remedy, relief, or cause of action, including injunctive relief, related to any violation of this ordinance or from any other law.

Section 7. If any provision of this ordinance or the application thereof to any person, entity, or circumstance is determined to be invalid by a court of competent jurisdiction, such determination shall not affect or impair the validity of the other provisions of this ordinance or its application to other persons, entities, and circumstances.

Section 8. That the sum of \$1,000.00 is hereby appropriated from the Unappropriated Fund Balance of the Health Levy Fund to the following account:

22-2330-502400-B	Communicable Disease Prevention	\$1,000.00
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Section 9. That the Interim Director of the Department of Health is designated as requisitioning authority for Account No. 22-2330-502400 and is hereby authorized to expend the sum of \$1,000.00 in funds heretofore appropriated to the account.

Section 10. That this ordinance, appropriating money, is recognized as an ordinance with an accelerated effective date as provided by Section 503(a)(3)(C) of the City Charter and shall take effect in accordance with Section 503 of the City Charter.

Section 11. This ordinance will take effect 11:59 pm on January 9, 2022 and will expire at 6:00 pm on February 3, 2022.

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I hereby certify that there is a balance, otherwise unencumbered, to the credit of the appropriation to which the foregoing expenditure is to be charged, and a cash balance, otherwise unencumbered, in the treasury, to the credit of the fund from which payment is to be made, each sufficient to meet the obligation hereby incurred.

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Tammy L. Queen  
Director of Finance

Approved as to form and legality:

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Tara Kelly  
Assistant City Attorney