



OFFICE OF THE  
CITY ATTORNEY

## DEPARTMENTAL CORRESPONDENCE



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TO: **Mayor Jordan**  
**City Council**

CC: **Susan Norton**, Chief of Staff

FROM: **Kit Williams**, City Attorney

DATE: **May 21, 2021**

RE: **Amending Fayetteville's Mask Mandate to Conform to Recommendations of the CDC and Fayetteville Board of Health**

Governor Hutchinson confirmed yesterday that he would not extend his pandemic emergency declaration after May. Pursuant to Section 5 of Ordinance 6323 (your mask mandate ordinance), the City Council needs to review this ordinance "immediately following the end of the state-declared emergency." The City Board of Health recently issued several recommendations in consideration of the new guidelines issued by the Center for Disease Control and Prevention (CDC). This topic will be discussed at your Agenda Session on May 25<sup>th</sup>.

I have taken the liberty to help start your discussion by drafting the attached ordinance which would **amend rather than repeal** Ordinance 6323. First, it would adopt the recommendation of the City Board of Health that all residents should be vaccinated as soon as possible. Later sections would continue your mask mandate requirements, but direct the mandate only to **not fully vaccinated** persons pursuant to both the CDC and City Board of Health recommendations. Finally, the Sunset Clause would obey state law to remove all such city requirements when that state law becomes effective on July 28, 2021.

The City Council may desire to use some available federal funding for vaccination advertisements or other programs to raise the number of fully vaccinated persons in Fayetteville. I will be happy to draft any such proposals and any other changes or additions the Council believes should be in this draft ordinance. Please contact me before the Agenda Session if possible, but I will also draft whatever the apparent consensus of the City Council requests at the Agenda Session.

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE TO AMEND ORDINANCE 6323 PURSUANT TO THE NEW RECOMMENDATIONS OF THE CENTER FOR DISEASE CONTROL AND PREVENTION AND THE CITY BOARD OF HEALTH**

**WHEREAS**, the City of Fayetteville followed the recommendations of the Center for Disease Control and Prevention (CDC) to establish its local regulation of face masks in places of public accommodation for Fayetteville businesses when it enacted Ordinance 6323; and

**WHEREAS**, on May 13, 2021 the CDC made substantial changes in its recommendations for wearing face masks and stated: "If you are fully vaccinated, you can resume activities that you did before the pandemic"; and

**WHEREAS**, the CDC further stated: "Fully vaccinated people can resume activities without wearing a mask or physically distancing..."; and

**WHEREAS**, the CDC continued its recommendation for mask wearing and physically distancing for all not fully vaccinated persons for all indoor places of public accommodation and most outdoor gatherings; and

**WHEREAS**, the Fayetteville Board of Health passed the attached recommendations to the City Council including: "2. Those persons that are fully vaccinated should no longer be required to wear masks within the City of Fayetteville, with the following exceptions: in healthcare settings, on mass transit, in prisons and jails, and in homeless shelters;" and

**WHEREAS**, Governor Hutchinson confirmed on Thursday, May 20<sup>th</sup> that he would not extend his pandemic emergency declaration which requires reconsideration of your mask mandate ordinance pursuant to its fifth section.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:**

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby joins with the City Board of Health and continues its recommendation that all residents should be vaccinated as soon as possible.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby amends Ordinance 6323, passed unanimously by the Fayetteville City Council on June 16, 2020, by first by amending its Section 1's initial introductory language requiring all persons to constantly wear face masks to the following:

"That the City Council of the City of Fayetteville, Arkansas hereby determines that the health and safety of Fayetteville residents requires that all not fully vaccinated persons within public service areas in all places of public accommodation are required to constantly wear face masks covering the nostrils and mouth of such unvaccinated person subject the following exceptions:"

The remaining subsections A., B., C., and D remain effective and unchanged.

Section 3: That the City Council of the City of Fayetteville, Arkansas hereby amends Section 2 of Ordinance 6323, by adding “not fully vaccinated” in front of “employees, customers and visitors...”

Section 4: That the City Council of the City of Fayetteville, Arkansas hereby amends Section 3 of Ordinance 6323 by adding to the last clause prior to “members of the public” the following: “not fully vaccinated”.

Section 5: That the City Council of the City of Fayetteville, Arkansas hereby amends Section 5 of Ordinance 6323 by repealing it in its entirety and enacting a new Section 5 as follows:

“Section 5: Sunset. Because the Legislature enacted laws which become effective on July 28, 2021 prohibiting cities from protecting their citizens, residents and visitors by mask or vaccination mandates, this ordinance and Ordinance 6323 shall become ineffective, unenforceable and inoperable on July 228, 2021.”

Section 6: Emergency Clause. That the City Council of the City of Fayetteville, Arkansas hereby determines that this ordinance should become effective without delay because of the CDC’s and City Board of Health’s recommendations that unvaccinated persons still need to wear masks in most indoor areas while fully vaccinated person do not need to wear face masks, this amending ordinance is necessary for the public peace as well as the health and safety of Fayetteville residents. Therefore, the City Council hereby declares an emergency exists such that this ordinance shall become effective immediately upon its passage and approval.

**PASSED** and **APPROVED** this 1<sup>st</sup> day of June, 2021.

APPROVED:

ATTEST:

By: \_\_\_\_\_  
LIONELD JORDAN, Mayor

By: \_\_\_\_\_  
KARA PAXTON, City Clerk/Treasurer



CITY OF  
**FAYETTEVILLE**  
ARKANSAS

To: Fayetteville City Council  
Mayor Lioneld Jordan

From: Fayetteville Board of Health  
Fayetteville City Health Officer

RE: Fayetteville Mask Recommendations, Revised

Date: May 17, 2021

The Covid vaccines have proven to be safe and effective. Several large studies which show that fully vaccinated persons are at low risk for illness, infection, and viral transmission of SARS-CoV-2. Furthermore, evidence suggests that the vaccines also provide protection against variant strains of SARS-CoV-2. Based upon scientific evidence, the Fayetteville Board of Health and the City Health Officer make the following recommendations to the City Council:

1. We strongly recommend that all citizens be vaccinated as soon as is feasible.
2. Those persons that are fully vaccinated should no longer be required to wear masks within the City of Fayetteville, with the following exceptions: in healthcare settings, on mass transit, in prisons and jails, and in homeless shelters.
3. Fully vaccinated people are those that are at least 14 days post receiving their second dose of either the Pfizer or the Moderna vaccines or 14 days post receiving the single dose Johnson and Johnson vaccine.
4. Unvaccinated and partially vaccinated persons need to wear their masks until they are fully vaccinated. This is to protect themselves and other unvaccinated and partially vaccinated persons from becoming ill with Covid-19.
5. We understand that knowing who is and is not vaccinated is not feasible.
6. We encourage mask wearing for those that still feel more comfortable doing so for whatever reason, especially those with underlying health conditions or on medications that might limit the efficacy of the vaccines.
7. We support local businesses that still require masks for all patrons recognizing that some businesses have patrons that are not yet eligible to be vaccinated.
8. We encourage our citizens to be respectful of each individual's decision to either wear a mask or not.
9. All of the above is subject to change depending upon CDC guidelines and local conditions. For example, if the new cases/day in Washington County are over 8 cases/day on a 14-day rolling average, this could cause the Board of Health to recommend all citizens wear a mask in public indoor venues.

References:

Note: Preprints have not been peer-reviewed. They should not be regarded as conclusive, guide clinical practice/health-related behavior, or be reported in news media as established information.

1. Honein MA, Christie A, Rose DA, Brooks JT, Meaney-Delman D, Cohn A, et al. Summary of Guidance for Public Health Strategies to Address High Levels of Community Transmission of SARS-CoV-2 and Related Deaths, December 2020. MMWR Morb Mortal Wkly Rep. 2020;69(49):1860-7.