

Pursuant to Ordinance 1.03 E.2, the Principal Sponsor has made changes to the draft presented to PSW. This clean version of the proposed ordinance includes the recommendations made by PSW on 10/26/20.

ORDINANCE NO. _____

**PRINCIPAL SPONSOR: ALDERPERSON BILL SIEL
CO-SPONSOR: ALDERPERSON CURT WILSON**

TO CREATE SECTION 4.04 OF THE CODE OF GENERAL ORDINANCES FOR THE CITY OF KENOSHA ENTITLED "BUSINESS CAPACITY AND FACE COVERING REGULATIONS PERTAINING TO CORONAVIRUS (COVID-19)"

The Common Council of the City of Kenosha, Wisconsin, do ordain as follows:

Section One: Section 4.04 of the Code of General Ordinances for the City of

Kenosha, Wisconsin, is hereby created as follows:

4.04 BUSINESS CAPACITY AND FACE COVERING REGULATIONS PERTAINING TO CORONAVIRUS (COVID-19)

FINDINGS AND PURPOSE

A. Findings

1. In December 2019, the novel coronavirus (COVID-19) was first identified and since that time has spread throughout the world, including to every state in the United States.
2. The first cases of COVID-19 appeared in the United States in January 2020 and the risk of community spread of COVID-19 has grown exponentially since that time.
3. That on March 11, 2020, the World Health Organization declared COVID-19 a pandemic.
4. That on March 25, 2020, the Common Council to address the novel Coronavirus COVID-19 declared a state of emergency in the City of Kenosha by resolution pursuant to its authority under Wis. Stats. Sections 323.11 and 323.14.
5. That as of September 18, 2020, Wisconsin has had more than 94,000 identified cases of COVID-19, including 911 deaths.
6. That since September 18, 2020, there have been 3,209 confirmed positive COVID-19 cases identified in Kenosha County, 2,235 of which have occurred in the City of Kenosha.
7. The Centers for Disease Control and Prevention ("CDC") continues to recommend certain actions for the preparation and mitigation of community transmission of COVID-19, including, but not limited to, social distancing measures, restricting the size of gatherings and face coverings.
8. The CDC Public Health Considerations for Reopening Restaurants and Bars During the COVID-19 Pandemic encourages social distancing and enhanced spacing at establishments including by limiting party sizes and occupancy.

9. The State of Wisconsin Badger Bounce Back Plan and the County of Kenosha Kickstart Plan each promote reduction of business capacity and limiting table sizes to ensure adequate social distancing.

10. That the Cities of Milwaukee, Racine, Green Bay, Shorewood and Superior have adopted mask ordinances to combat the transmission of COVID-19.

11. That major retailers in Kenosha County with a statewide presence have mandated face covering requirements in their business locations. Those businesses include, Kohl's, Meijer, Walmart, Sam's Club, Festival Foods, Menard's, Woodman's, Costco and Pick 'N Save.

12. That on August 1, a statewide face mask mandate went into effect by executive order of Wisconsin Governor Tony Evers. Governor Evers extended the mandate on September 22, 2020, and set an expiration date of November 21, 2020. On October 16, 2020, a lawsuit challenging the mandate was filed with the Wisconsin Supreme Court and the decision is pending.

13. That on September 17, CDC Director Robert Redfield said, "The best defense we currently have against this virus are the important mitigation efforts of wearing a mask, washing your hands, social distancing and being careful about crowds."

14. That on November 11, the Wisconsin Department of Health Services reported 6,922 cases in Kenosha County and 100 deaths; the state's fifth highest mortality rate.

15. The Council finds that it is in the best interest of the public peace, health, welfare, and safety, and to preserve the lives of citizens of the City of Kenosha to provide operational requirements for businesses operating within the City of Kenosha.

B. Purpose. The City of Kenosha pursuant to the emergency powers authorized by Sections 323.11 and 323.14 require the following regulations relating to the novel coronavirus (COVID-19) which are necessary in order to protect, preserve, and promote the general health, safety, and welfare of the public and intended to slow the future spread of COVID-19.

C. Definitions. As used in this section, the terms below have the following meanings.

1. "Building Open To Public as used herein means any structure used in whole or in part as a place of resort, assemblage, lodging, trade, traffic, occupancy, or other use by the public.
2. "Business" as used herein is any place of employment.
3. "Face Covering or mask" as used herein is a device to securely cover the nose and mouth of a person which remains affixed in place without the use of one's hands, to impede the spread of saliva or other fluids during speaking, coughing, sneezing or other intentional or involuntary action. Medical grade masks are not required; coverings may be fashioned from scarves, bandannas, gaiters or other suitable fabrics. The mask must securely cover the mouth and nose of the wearer.
4. "Party" and "Parties" as used herein means groups of six or fewer adult patrons. Minors are allowed and not included in party limits.
5. "Patron" as used herein means a customer of any business defined in Section D. herein and does not include the owners, employees or staff of any such business.
6. "Premises" as used herein means the business building, structure or any portion thereof together with the parking lot, patio and other outdoor seating area for such business.
7. "Public space" as used herein means any indoor or outdoor space that is open to the public. This does not include any private residence, private residence, private residential property, or private offices or workspace that are not open to customers or to public visitors.
8. "Seating" as used herein means patron seating at tables, counters and bars.
9. "Social distancing" as used herein means separation of at least six (6) feet between all individuals on the premises including but not limited to employees, customers, and members of the public and limit the number on the premises, except for those contacts that are incidental and brief in nature. This shall not be construed to require physical distancing between individuals from the same household.

D. Business Operations.

1. All licensed food/beverage service businesses entities including but not limited to restaurants, food courts, coffee houses, bars, breweries, distilleries, wineries, clubs, cafes and other similar places of public accommodation offering food and beverages for on-site consumption, including any alcohol licensees with on-sale privileges, shall be permitted to serve patrons on-site if the business so long as it provides seating for all parties which is no less than six (6) feet apart from other parties and the maximum number of patrons allowed upon the business's premises at any given time shall not exceed the greater of the following:

- a. Ten (10) patrons; or
- b. Fifty percent (50%) of the business's occupant capacity as determined by the City Bureau of Fire Prevention

2. All businesses such as recreational facilities, theaters, health clubs, and other entertainment venues shall be permitted to allow patrons into their businesses so long as the maximum number of patrons allowed upon the business's premises at any given time shall not exceed the greater of the following:

- a. Ten (10) patrons; or
- b. Fifty percent (50%) of the business's occupant capacity load as determined by the City Bureau of Fire Prevention.

3. In client-based related businesses, which due to the service being provided, prevent social distancing from being possible, such as but not limited to, hair/nail salons, spas, medical offices, dental offices, physical therapy establishments, massage establishments, tattoo parlors, etc., social distancing is not required while providing service to the business's patron. Social distancing must be maintained between patrons within any such establishment. Maximum number of patrons allowed upon the business's premises at any given time shall not exceed the greater of the following:

- a. Ten (10) patrons; or
- b. Fifty percent (50%) of the business's occupant capacity load as determined by the City Bureau of Fire Prevention.

4. All businesses, including those not listed in Sections D.1. or D.2 or D.3. above, are expected to maintain social distancing between patrons and/or parties and should implement or continue to implement procedures to ensure compliance with federal and state health guidance in order to prevent the spread of COVID-19.

E. Use of Face Coverings

1. All persons in the City of Kenosha must cover their mouths and noses with a face covering when:

- a. In any Building Open To Public; or
- b. Waiting for or riding on public transportation or riding in a taxi, private care service, or ride-sharing vehicle.

2. All businesses, organizations, and non-profit entities within the City of Kenosha must require all employees, customers, visitors, members, or members of the public to wear a face covering when:

- a. Employees are working in any space visited by customers or members of the public, regardless of whether customers or members of the public are present at the time.
- b. Employees who are working in any space where food is prepared or packaged for sale or distribution to others.
- c. Customers, visitors, members, or members of the public are in a facility managed or operated by the business, organization, or entity.
- d. Employees are in any room or enclosed area where other people, except for members of the same family or household, are unable to maintain a six-foot distance except for infrequent or incidental moments of closer proximity.

3. Exemptions. Face coverings are not be required:

- a. For children aged five years or under.
- b. Persons who fall into the Centers for Disease Control and Prevention's guidance for those who should not wear face coverings due to a medical condition, mental health condition, developmental disability, or are otherwise covered under the Americans with Disabilities Act.
- c. Persons who have upper-respiratory chronic conditions, silent or invisible disabilities.
- d. Persons who are hearing impaired, or communicating with a person who is hearing impaired, where the ability to see a person's mouth is essential for communication.
- e. Persons who are obtaining a service involving the nose, mouth, or face for which temporary removal of the face covering is necessary to perform the service.
- f. Persons who are seated at a restaurant or other establishment that offers food or beverage service, while they are eating or drinking, provided they maintain a six-foot distance between individuals, not including individuals who are members of the same family or household or are seated together, with only infrequent or incidental moments of closer proximity.
- g. Persons for whom wearing a face covering would create a risk to the person related to their work, as determined by local, state, or federal regulations or workplace safety guidelines.
- h. Whenever federal, state, or local law otherwise prohibit wearing a face mask or where it is necessary to evaluate or verify an individual's identity.
- i. Persons whose religious beliefs prevent them from wearing a face covering.
- j. While exclusively with members of a family or the same household, and no person other than such family or household is within the same enclosed area.
- k. In private, individual offices or office suites.
- l. Persons in settings where it is not practical or feasible to wear face coverings when obtaining or rendering goods or services to the extent necessary to obtain or render such goods or services including but not limited to the receipt of dental services or medical treatments or consuming food or beverages.
- m. Persons present in government facilities closed to the public, institutions of higher education, public and private K through 12 schools, and childcare or youth facilities that have a mitigation strategy approved by the Kenosha County Health Department.

F. Refuse Entry or Service. The owner or operator of any business or building may refuse entry or service to any person who fails to comply with this section.

G. Enforcement.

1. The Kenosha County Health Department is authorized to enforce this section.

2. Officers of the City of Kenosha Police Department are authorized to enforce provisions of this Section with regard to compliance in establishments that have a Class “A”, “Class A”, Class “B”, “Class B”, or “Class C” license, or combination thereof.

H. Severability.

If any provision of this Ordinance or its application to any person or circumstance is held to be invalid, then the remainder of the Ordinance, including the application of such part or provisions to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Ordinance are severable.

I. Penalties.

1. Any owner, operator, manager, or person having control of a business found guilty of failing to enforce any provision of Paragraph 4.04. E.2., upon conviction thereof, is subject to a forfeiture not to exceed Five Hundred Dollars (\$250.00), together with the costs of prosecution. 2. If any person continues to violate this Section after notice is given by an owner, operator, manager, or person having control of a business, or by a police officer or a representative of the Kenosha County Health Department, a citation may be issued to the individual in lieu of the business. Upon conviction of a violation of this section 4.04, the person is subject to a forfeiture not to exceed Twenty-five Dollars (\$25) upon the first conviction, Fifty Dollars (\$50) upon the second conviction, and One Hundred Dollars (\$100) upon the third or subsequent conviction, together with the costs of prosecution.

J. Sunset. This ordinance remains in effect until March 31, 2021, unless extended or earlier terminated or modified by the common council.

Section Two: This Ordinance shall become effective upon passage and publication.

ATTEST: _____ City Clerk/Treasurer
MATT KRAUTER

APPROVED: _____ Mayor Date: _____
JOHN M. ANTARAMIAN

Passed:

Published:

Drafted By:

EDWARD R. ANTARAMIAN
City Attorney
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Deputy City Attorney

Kenosha County Eye