



Legislation Text

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AN EMERGENCY ORDINANCE AMENDING CHAPTER 34 OF THE DULUTH CITY CODE BY ADDING SECTIONS 34-45.1 THROUGH 34-45.5 REQUIRING FACE COVERINGS IN INDOOR SPACES OF PUBLIC ACCOMMODATION. (REPLACEMENT)

BY COUNCILOR TOMANEK:

The city of Duluth does ordain:

Section 1. Preamble.

WHEREAS, the COVID-19 pandemic has constituted a public health emergency since March of 2020; and

WHEREAS, on July 13, 2020, the council enacted emergency Ordinance 10708 requiring face coverings in indoor spaces of public accommodation in response to the COVID-19 pandemic; and

WHEREAS, on May 24, 2021, the council repealed the face covering mandate based on U.S. Centers for Disease Control and Prevention ("CDC") advice that fully vaccinated people no longer need to wear a face covering in any setting; and

WHEREAS, since the repeal of the face covering mandate, the COVID-19 Delta and Omicron variants have been determined by the CDC to be highly transmissible and responsible for increasing the potential risk of infection and spread of the virus through the community; and

WHEREAS, positive test rates for COVID-19 in Minnesota are currently nearly 13 percent, more than twice the five percent level health officials find concerning; and

WHEREAS, Duluth children and citizens with underlying medical conditions are especially vulnerable to hospitalization due to COVID-19.

Section 2. Pursuant to the authority of Section 11 of the Duluth City Charter, 1959, as amended, (the "Charter") in order for the immediate preservation of the public peace, health and safety of the citizen of the city of Duluth, an emergency is hereby declared.

Section 3. That Chapter 34 of the Duluth City Code is hereby amended by adding Sections 34-45.1 through 34-45.5 as follows:

Sec. 34-45.1. Face Covering Requirement - Purpose

(a) Face coverings are a simple barrier to help prevent respiratory droplets from traveling into the air and onto other people when the person wearing the face covering coughs, sneezes, talks, or raises their voice. This is called source control.

(b) Respiratory droplets spread the virus that causes COVID-19 and evidence from clinical and laboratory studies show face coverings reduce the spray of droplets when worn over the nose and mouth.

(c) COVID-19 spreads mainly among people who are in close contact with one another (within about 6 feet), so the use of face coverings is particularly important in settings where people are close to each other or where social distancing is difficult to maintain.

(d) Social distancing is difficult to maintain indoors business establishments.

Sec. 34-45.2. Definitions.

For the purposes of this Article, the following words and phrases shall mean:

(a) A Space of Public Accommodation means the indoor space of a business, or an educational, refreshment, entertainment, or recreation facility, or public transportation, or an institution of any kind, whether licensed or not, whose goods, services, facilities, privileges, advantages, or accommodations are extended, offered, sold, or otherwise made available to the public. Examples include retail stores, rental establishments, Duluth Transit Authority buses, facilities, and bus shelters, government buildings, the Duluth Skywalk system, places of worship, and service establishments as well as educational institutions, recreational facilities, and service centers.

- (b) Face Covering means a face mask that complies with CDC guidelines and that:
 - (1) Covers the mouth and nose;
 - (2) Fits snugly against the sides of the face; and
 - (3) Is secured on the face.

Sec. 34-45.3. Face Covering Required Indoors.

(a) A Space of Public Accommodation Shall Require Face Coverings Indoors. It shall be unlawful for a Space of Public Accommodation to allow a person who is five years of age or older to enter or remain in their Space of Public Accommodation without wearing a Face Covering.

(b) Face Covering Required in a Space of Public Accommodation. It shall be unlawful for a person who is five years of age or older to enter or remain in a Space of Public Accommodation without wearing a Face Covering.

(c) Required Notices. Spaces of Public Accommodation shall post notice of this Face Covering requirement in conspicuous locations inside and outside entrances to their Space of Public Accommodation.

(d) Exceptions. Sections (a)-(c) shall not apply to:

- (1) Persons unable to wear Face Coverings for genuine medical reasons;
- (2) Persons in a private room of a multi-tenant residence, such as an apartment building, or lodging establishment, such as a hotel, motel, or vacation rental. Face Coverings must be worn in all indoor common areas of said establishments;
- (3) Business patrons who are actively eating and/or drinking provided that all individuals wear a Face Covering when walking to or from their seat while standing in or walking through public areas such as lobbies and restrooms, and when an employee of the business is at the table serving or clearing;
- (4) Business owners, managers, and employees who are in an area of a business establishment that is not open to customers, patrons, or the public, provided that six feet of distance exist between persons;
- (5) In settings where it is not feasible to wear a Face Covering, including when obtaining or rendering goods or services such as the receipt of medical or dental services, or swimming; and
- (6) Police officers, fire fighters and other first responders when it would interfere with public safety.

Sec. 34-45.4. Violations- Penalties

(a) Violations of Section 34-45.3 by Spaces of Public Accommodation are punishable by one or more of the following:

- (1) Issuance of warning letter(s);
- (2) Fines not to exceed those set in accordance with Section 31-8 of this Code for the first and second offenses and a fine as provided in Section 1-7 of this Code for all subsequent offenses; and/or
- (3) Misdemeanor criminal prosecution pursuant to Minnesota Statutes Section 12.45.

(b) Violations of this Section 34-45.3 by persons are punishable by one or more of the following:

- (1) Civil trespass from the Space of Public Accommodation;
- (2) Prosecution, if applicable, for trespass in violation of Duluth City Code 34-30; and/or
- (3) Criminal prosecution, if applicable, for criminal trespass in violation of Minnesota Statutes Section 609.605.

Section 4. That pursuant to the Duluth City Charter Chapter III, this emergency ordinance shall require one reading by council and shall take effect forty-eight hours after its passage by the council. This emergency ordinance will remain in effect until March 1, 2022 unless extended to a date certain by written order of the mayor file with city clerk..

STATEMENT OF PURPOSE: This is an emergency ordinance prohibiting a Space of Public Accommodation from allowing a person to enter or remain in a Space of Public Accommodation without wearing a Face Covering. The preamble in Section 1 must be passed by an affirmative vote of all members of the council in attendance at the meeting considering this emergency legislation. Once the preamble has received the requisite affirmative votes, the council shall vote on the emergency ordinance.

Face coverings are recommended by the US Center of Disease Control and Prevention ("CDC") as a simple

barrier to help prevent respiratory droplets from traveling into the air and onto other people when the person wearing the face covering coughs, sneezes, talks, or raises their voice. This is called source control. The CDC's recommendation is based on what is known about the role respiratory droplets play in the spread of the virus that causes COVID-19, paired with emerging evidence from clinical and laboratory studies that show face coverings reduce the spray of droplets when worn over the nose and mouth. COVID-19 spreads mainly among people who are in close contact with one another (within about six feet), so the use of face coverings is particularly important in settings where people are close to each other or where social distancing is difficult to maintain.

Pursuant to Section 11 of the Charter, the Preamble must be separately unanimously approved by council prior to the adoption of the ordinance.