

ORDINANCE NO. 1186

AN ORDINANCE AMENDING CHAPTER 32 OF THE NICHOLS HILLS CITY CODE CONCERNING DETERMINATION OF A STATE OF EMERGENCY AND ENACTING REGULATIONS TO CONTROL THE COVID-19 VIRUS; REPEALING ALL CONFLICTING ORDINANCES OR PARTS OF ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

EMERGENCY ORDINANCE

WHEREAS, the United States is experiencing is a massive outbreak of the Novel Coronavirus-2019, also known as COVID-19 (“COVID-19” or “COVID-19 Virus”), infecting millions of people in the United States, including thousands of people in Oklahoma, which is part of a world-wide COVID-19 pandemic (“Pandemic”) ; and

WHEREAS, pursuant to Section 22-120 of Title 11 of the Oklahoma Statutes, municipalities are authorized to make regulations to prevent the introduction of contagious diseases into the municipality and may enforce quarantine laws; and

WHEREAS, Title 21, Section 1321.9 of the Oklahoma Statutes allows cities and towns to enact ordinances establishing a State of Emergency; and

WHEREAS, the City Council of the City of Nichols Hills, Oklahoma (“Council”) pursuant to the authority vested in the Council pursuant to the Ordinances of the City and the Laws of the State of Oklahoma, determined by Resolution 1373, approved on March 24, 2020, that the Pandemic and the resulting local community transmission of such disease was a public disaster which affects life, health, property and public peace (“Public Disaster”) within the limits of the City of Nichols Hills, Oklahoma (“City”), and declared a state of emergency within the City; and, the Council now determines that the Public Disaster continues; and therefore, the Council hereby ratifies, renews, restates and amend Resolution 1373 insofar as it determines that the Pandemic is a Public Disaster, and further, the Council renews, restates and presently declares a state of emergency within the City; and therefore, the Council enacts the following Ordinance:

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NICHOLS HILLS, OKLAHOMA:

SECTION 1. Chapter 32, Article VI, entitled *Offenses Involving Public Safety*, of the Nichols Hills City Code is hereby amended by adding a new Division 3 entitled *COVID-19 Virus Control Regulations*, and the Council hereby (i) affirms the prior enactments and provisions set forth above, (ii) renews, restates and presently declares a state of emergency within the City, and (iii) repeals, supersedes and replaces the provisions of Ordinance No. 1183 enacted on June 9,

2020, (iv) and further enacts, along with forgoing, the following new amended provisions of the Nichols Hills City Code, to wit:

**ARTICLE VI. OFFENSES INVOLVING PUBLIC SAFETY.**

**DIVISION 3. COVID-19 VIRUS CONTROL REGULATIONS.**

**Sec. 32-224. Statement of Findings and Determinations by the Council regarding the COVID-19 Virus.**

(a) The Council hereby makes the following findings and determinations regarding the COVID-19 Virus:

1. The United States is experiencing an outbreak of Novel Coronavirus-2019 also known as COVID-19; and
2. On March 11, 2020, the World Health Organization characterized the COVID-19 outbreak as a pandemic; and
3. On March 13, 2020, the President of the United States declared a National Emergency because of the COVID-19 pandemic and which declaration is still in effect today; and
4. On March 15, 2020, the Governor of Oklahoma declared a State of Emergency because of the COVID-19 pandemic and which declaration is still in effect today; and
5. The Center for Disease Control (“CDC”) has emphasized the COVID-19 risk to individuals is dependent on exposure, and transmission is through respiratory droplets produced when an infected person coughs or sneezes; and
6. There have been COVID-19 related deaths statewide with over 110 deaths in the Oklahoma City metropolitan area; and
7. Oklahoma City-County Health Department (“OCCHD”) states this is the worst public health crisis to face our city in the last half-century; and
8. The Council of the City finds that the Center for Disease Control (CDC) has identified a virus, COVID-19, which is causing a pandemic throughout the world and the United States remains present, extremely contagious, and potentially deadly within the City; and
9. After reaching a low point for positive tests and hospitalizations, in June 2020 the Oklahoma City metropolitan area experienced a significant increase in the number of COVID-19 positive tests and hospitalizations; and

10. After a period where the rise in new cases subsided, the increase in new cases and positive testing percentages has resumed and remains at an elevated level relative to previous phases of the pandemic; and
11. Since mid-June, hospitalizations have consistently remained at an elevated level that causes concern to public health officials; and
12. The OCCHD data have successfully identified safety measures that will substantially improve the City's response to this pandemic, preserving the health of the community; and
13. Based upon information provided by local healthcare providers and public health experts, the current surge occurred, in part, due to public gatherings associated with the Fourth of July holiday where social distancing and mask wearing protocols were not observed; and
14. One strong recommendation by the CDC and OCCHD is the adoption of the safety measure for the mandatory wearing of face coverings (masks) over the nose and mouth to help prevent air-borne virus particles from causing new infections and, depending on the design of the mask, can also help prevent the persons wearing the face covering to not become infected with COVID-19; and
15. With the transmission of COVID-19 and COVID-related hospitalizations continuing at an elevated level, provisions for the safety of the life, health, and property of City residents are still necessary; and
16. The Council declares that the continuing occurrence and threat of widespread or severe damage, injury or loss of life or property from COVID-19, including severe economic damage to the City and the State of Oklahoma, which can result from COVID-19 justifies emergency action by the City to help avert such danger or damage and to protect the public health.
17. The Council further declares an emergency need for an ordinance containing the COVID-19 safety measures for the mandatory wearing of face coverings over the nose and mask whenever persons are in any place or setting open to the general public; and
18. The Council notes that on Friday, July 10, 2020, Dallas Federal Reserve Bank President Robert Kaplan publicly stated that:
  - i. The “key to ensuring a faster U.S. economic recovery is wearing masks to slow the spread of the coronavirus;” and
  - ii. “How the [COVID-19] virus proceeds, and what the incidence is, is going to be directly related to how fast we grow [economically]”... ; and

- iii. “While monetary and fiscal policy have a key role to play, the primary economic policy from here is broad mask wearing and good execution of... health care protocols; if we do that well, we’ll grow faster”; and
  - iv. “The message I’d have today about the economy (is that) while monetary policy and fiscal policy are very important, they are not as important right now in us doing a good job of flattening this curve on the virus, and if we do that, we’ll grow faster.”
19. The Council further notes that the recent surge in COVID-19 cases in several U.S. states is raising concern that the economic recovery that likely began in May, 2020 could falter if authorities re-impose lockdowns or consumers reduce spending out of fear that getting out and about could mean they get the sometimes fatal disease.
20. The Council further notes that Goldman Sachs Group Inc. economists have argued that a national mask mandate would boost the chances of a faster recovery; and that Mr. Kaplan, a former Goldman Sachs bank officer, reiterated that the U.S. economy will likely shrink by 4.5% to 5% in 2020, even after what he expects to be growth during the third and fourth quarters.
21. The Council also finds that it is appropriate and in the interests of the public health, safety, and welfare and would further protect property and civil order, for the Council to adopt this Ordinance with, among other things, a regulation mandating the wearing of masks over the nose and mouth whenever persons are entering and while inside any indoor place open to the public; and
22. The Council states that this Ordinance is being enacted to limit the health impacts and slow the spread of COVID-19 by mandating the wearing of face coverings over the nose and mouth whenever persons are entering and while inside any indoor place open to the public; and
23. Based upon further information from local healthcare providers and public health experts, the present enactment of COVID-19 regulations will reduce the potential for an additional COVID-19 surge associated with the Labor Day holiday weekend; and
24. Therefore, based on the forgoing and other provisions of this Ordinance set forth above, the Council determines that enactment of this Ordinance is in the interests of public health, safety, welfare, the protection of property and preservation of civil order, and will reduce the possibility of the need to enact in the future more stringent COVID-19 regulations interfering with employment and social interaction.

**Sec. 32-225. COVID-19 Virus control - General Regulations**

- (a) All restaurants, bars, breweries, wineries, taverns, food halls, cafeterias, and any other food service are required to maintain the following standards to limit the spread of the COVID-19 Virus:

- (1) Employees' temperatures should be checked each day either by the employee or their employer and employees with a temperature above 100.4°F should not be at the facility;
- (2) All servers and staff interacting with customers must wear facial masks or coverings, including but not limited to table bussers and food delivery personnel; except that wait staff taking customer orders, hosts/hostesses and managers need not wear facial masks or coverings provided that they maintain six (6) feet of social distancing from customers;
- (3) All tables available for seating must be at least six (6) feet apart;
- (4) All menus shall be single use or capable of being sanitized after each use;
- (5) All condiment bottles must be sanitized after each table change, or condiments must be served in a single use packet, disposable container, or washable dish;
- (6) Service at buffets and salad bars must be provided by an employee only;
- (7) Tables, chairs, and objects used to complete a purchase must be sanitized using appropriate antimicrobial disinfectants after each use; and
- (8) No parties exceeding ten (10) people are allowed at one table in the dining area, unless household family members.

(b) All athletic gyms, recreation centers, exercise facilities, indoor sports facilities, and similar recreational facilities must maintain strict social distancing, CDC sanitation protocols, and comply with the following standards:

- (1) Employees' temperatures should be checked each day either by the employee or their employer and employees with a temperature above 100.4°F should not be at the facility;
- (2) Employees that have contact with the public must wear face masks or coverings;
- (3) Surfaces such as doorknobs, gates, counters, and other items that are high-touch should be regularly cleaned and sanitized using appropriate antimicrobial disinfectants;
- (4) Locker rooms and bathrooms must be cleaned and sanitized regularly, particularly high-touch surfaces, and ensure they have handwashing supplies;
- (5) Measures must be taken to ensure that access to handwashing/hand sanitizing facilities and supplies are available for employees and customers; and

(6) Rental equipment and shared equipment must be cleaned and sanitized by the customer or an employee using appropriate antimicrobial disinfectants before or after each use.

(c) Personal care businesses may operate by appointment only and must follow CDC sanitation protocols and comply with the following standards:

(1) Employees' temperatures should be checked each day either by the employee or their employer and employees with a temperature above 100.4°F should not be at the facility;

(2) Employees at these facilities must use facial masks or coverings, and customers shall be offered sanitized face coverings, provided that if the customer does not have a mask or face covering of their own, service may be refused;

(3) All chairs and tools must be sanitized using appropriate antimicrobial disinfectants between customers; and

(4) While receiving services, customers shall remain at least six (6) feet apart.

“Personal care” businesses include salons (hair and nail), barber shops, cosmetology facilities, esthetician facilities, laser hair removal facilities, spas, massage facilities, tattoo parlors, and piercing facilities.

(d) Other than event permits described in subsection (a) hereof, all licenses, permits, and certificates previously issued by the City and scheduled to expire while this State of Emergency is in effect shall be deemed to be renewed, provided that the applicable fees are paid and necessary inspections and approvals, if any, are satisfactorily completed, within thirty (30) days following the repeal of this Ordinance.

(e) Notwithstanding any conflicting provisions contained in the Nichols Hills City Code, temporary signs notifying the public of carry-out or curbside service are permitted.

(f) This Section only regulates the activities and uses herein described, and does not otherwise regulate retail, commercial, office, service, institutional, residential or other activities or uses.

(g) Any person, including but not limited to an owner, manager, employee and/or representative of a location or facility, not complying with the requirements of this Section shall be in violation of the Nichols Hills City Code.

(h) The regulations of this Section shall be effective at 12:01 AM on July 27, 2020 and shall continue in effect until terminated by law or by future action of the Council.

### **Sec. 32-226. COVID-19 Virus control - Mask Regulations**

(a) Face Coverings required.

All persons shall wear face coverings when entering and while inside any indoor place open to the public. The term “face covering” as used in this Section shall mean a uniform piece of material that securely covers a person’s nose and mouth and remains affixed in place without the use of one's hands and/or a face shield (“Face Covering”).

(b) Guidelines for Face Coverings.

The public is encouraged to wear Face Coverings that:

- (1) it snugly but comfortably against the side of the face;
- (2) are secured;
- (3) allow for breathing without restrictions; and
- (4) Face Coverings may be disposable or non-disposable.

(c) Exceptions.

Nothing herein shall require the wearing of face coverings by:

- (1) persons under 11 years of age unless required by a school or day care to wear a Face Covering;
- (2) persons working in a professional office who do not have any face-to-face interactions with the public;
- (3) restaurant patrons while eating or drinking;
- (4) persons in a setting where it is not practical or feasible to wear a face covering, such as when receiving dental services, medical treatments, or while swimming or at a splash park;
- (5) persons engaged in any competitive sporting activities, whether professional or amateur or merely for recreational purposes;
- (6) persons engaged in performing cardio exercise, but they should make a reasonable effort to practice social distancing from persons not from their household;
- (7) persons inside any Federal, State, or county government building or other facility;
- (8) persons inside any public or private school building or other facility unless required by the school to wear a Face Covering; and

(9) persons attending any indoor religious service or ceremony as long as all persons who do not live in the same household are social distancing from one another are not less than 6 feet apart; and

(10) persons with a development disability, including persons who are deaf and hard of hearing.

(d) Enforcement.

This Section may be enforced by any legally authorized code-enforcement inspectors or sworn police officers, as follows: authorized OCCHD inspectors, authorized code-enforcement inspectors of the City, and sworn peace officers of the Nichols Hills Police Department (“Inspectors and Officer”). However, Council prefers that OCCHD inspectors or code-enforcement inspectors of the City become the enforcers in the future.

(e) Violation and Penalties.

(1) Inspectors and Officers, at the initial contact, shall offer a Face Covering or the option of leaving the indoor place to a person who is not excepted from the Face Covering requirement. No citation shall issue to a person who complies with one of the options. Failure to wear the Face Covering or failure to leave the indoor place shall constitute a violation of this Section.

(2) Each violation of this Section shall constitute a separate offense. Upon conviction, the penalty shall not exceed, for the first and second offenses, a \$9 fine only. A third or subsequent violation of this Section shall require a mandatory appearance in the Municipal Court and, upon conviction, shall be punishable with a penalty not exceeding \$100 inclusive of costs and State-mandated fees.

(f) Defense to Violation.

It shall be a defense to any violation of this Ordinance if an individual produces a document from a physician stating that wearing a Face Covering could cause impairment or would constitute a hazard to the individual.

(g) Effective Date.

The regulations of this Section shall be effective at 12:01 AM on July 27, 2020 and shall continue in effect until terminated by law or by future action of the Council.

**Secs. 32-227 - 32-354. Reserved**

SECTION 2. This Ordinance shall be codified as set forth above.

SECTION 3. All ordinances and resolutions or parts of same in conflict herewith, to the extent of such conflict, are hereby repealed.

SECTION 4. The provisions of this ordinance are severable and if any part or provision hereof shall be adjudged invalid by any court of competent jurisdiction, such adjudication shall not affect or impair any of the remaining parts or provisions hereof.

SECTION 5. EMERGENCY SECTION. WHEREAS, in the judgment of the Council it is necessary for the preservation of the peace, health, welfare and safety of the City of Nichols Hills, Oklahoma, and of the inhabitants thereof that the provisions of this ordinance be put into full force and effect immediately, and therefore an emergency is hereby declared to exist by reason whereof this ordinance shall take effect and be in full force from and after its passage as provided by law.

PASSED by the Council of the City of Nichols Hills, Oklahoma, on the 23rd day of July, 2020.

APPROVED by the Mayor of the City of Nichols Hills, Oklahoma, on the 23rd day of July, 2020

ATTEST: Sody Clements  
Mayor

Amanda Copeland  
City Clerk

Reviewed as to Form and Legality:

John Michael Williams  
City Attorney