



Legislation Details (With Text)

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**Title:** Consider two options concerning wearing protective face coverings in public within the City of Naperville:

OPTION 1: Waive the first reading and pass the ordinance amending the Naperville Municipal Code to require protective face coverings in public within the City of Naperville (six positive votes required)

OPTION 2: Adopt the resolution affirming and encouraging the wearing of protective face coverings in public within the City of Naperville

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Date	Ver.	Action By	Action	Result
12/1/2020	1	City Council		
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**CITY COUNCIL AGENDA ITEM**

**ACTION REQUESTED:**

Consider two options concerning wearing protective face coverings in public within the City of Naperville:

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OPTION 2: Adopt the resolution affirming and encouraging the wearing of protective face coverings in public within the City of Naperville

**DEPARTMENT:** Legal Department

**SUBMITTED BY:** Michael DiSanto, City Attorney

**BOARD/COMMISSION REVIEW:**

N/A

**BACKGROUND:**

The outbreak of the novel coronavirus (COVID-19), a highly contagious disease, and rapid increase in the number of new cases reported to both the DuPage and Will County Health Departments continues to jeopardize the public health and safety of Naperville residents. According to recent data

from the DuPage and Will County Health Departments, Naperville is experiencing a significant increase in its COVID-19 testing positivity rate as well as in the number of COVID-19 infections, hospitalizations, and deaths compared to the spring and summer of this year.

The United States Centers for Disease Control and Prevention (CDC) and the Illinois Department of Public Health (IDPH) have identified the risks associated with the outbreak of COVID-19 and made recommendations for suppression of the disease. Because people who are asymptomatic can spread COVID-19, the recommendations include a provision that all individuals wear protective face coverings in public settings where other social distancing measures may be difficult to maintain.

Since May of 2020, the Governor of the State of Illinois has had an executive order in effect which generally mandates that protective face coverings be worn by all individuals (over age two and medically able) when in a public place and unable to maintain a six-foot social distance. However, there has not been consistent enforcement of those requirements due to a lack of clarity as to what entity, or entities, are responsible for enforcement.

Since the inception of the pandemic, the City has actively publicly promoted, and encouraged, best safety practices including multiple public awareness campaigns (e.g., “Follow the 3Ws: **W**ear a mask, **W**atch your distance and **W**ash your hands” and the City Council’s “Mask Up, Naperville!” public service announcement).

Governor Pritzker recently issued an executive order imposing “Tier 3 mitigation measures” that increased protective COVID-19 related regulations and guidelines for the state, effective November 20, 2020.

At its November 17, 2020 meeting, the City Council directed staff to prepare an ordinance for consideration which requires protective face coverings to be worn in public within the City of Naperville so that local enforcement of this safety precaution may be maximized.

## **DISCUSSION:**

### **Comparable Communities**

Staff has surveyed several other communities regarding face coverings. This survey has revealed that:

1. None of the communities surveyed employ police resources to enforce face covering regulations against individuals.
2. Of those communities surveyed that are acting on face coverings, nearly all focus efforts on compliance through positive reinforcement and education rather than enforcement. Some communities also have local health departments to assist with education, promotion, and compliance.
3. Most communities that have local face covering regulations focus on business compliance, rather than compliance by individuals.

Police staff surveyed its 29 benchmark agencies located throughout the United States and asked the question, “Have your municipalities enacted a mandatory face covering ordinance, and if so, how is it enforced, and by whom?” Responses were received from 13 departments and the following is a summary of what was reported:

- 5 reported that no face covering wearing ordinance had been enacted.
- 1 reported a state-wide mandate had been enacted and enforced by county health departments.
- 7 reported enacting a face covering ordinance with the focus on education rather than enforcement. Responsibility for enforcement was delegated to either the health department, code compliance, and in one case the fire department. Police agencies were not involved in enforcement efforts unless a crime was reported.
- There were no examples where an actual citation had been issued to an individual for failing to wear a face covering.

Staff also surveyed other communities that have publicly considered a local face covering ordinance. A summary of the input from those communities is provided below.

<b>Aurora, IL</b>	Amended local disorderly conduct ordinance to generally cover disobeying any lawful emergency order issued by the governor or Department of Public Health.
<b>Decatur, IL</b>	Recently passed a local face covering ordinance focused on individuals. Previously had a local ordinance that required businesses to comply with health guidelines. The police department is tasked with enforcement and have also started proactive business checks to encourage compliance.
<b>Evanston, IL</b>	Directs community to governor's executive order establishing the state-wide mask mandate.
<b>Rockford, IL</b>	Passed ordinance that generally covers disobeying any lawful emergency order issued by the governor.
<b>Springfield, IL</b>	Recently enacted an executive order concerning face coverings focused on ensuring they are worn inside businesses.
<b>Hermosa Beach, CA</b>	Passed a local face covering ordinance including location based requirements. Following a thorough public education campaign and a period of local in-house 'enforcement' with warnings given by code enforcement and public safety officials, the City ultimately contracted with a private security company to encourage mask wearing in key public gathering areas throughout the community.
<b>New Castle, NY</b>	Local face covering ordinance enforced by police, limited citations written to businesses.
<b>Amherst, MA</b>	Local face covering order passed and enforced by local health department. No citations have been issued, instead focus is on a proactive education/compliance campaign.
<b>Oxford, OH</b>	Initially focused only on public education. Recently, began enforcing local face covering ordinance against non-compliance businesses.
<b>NY Community</b>	Recently passed a local face covering ordinance and will have police enforce, but the police are concerned over having enforcement responsibilities.
<b>Georgetown TX</b>	Police charged with enforcement, but have focused on education and voluntary compliance.
<b>Omaha, NE</b>	Unaware of number of citations issued, more focused on education and compliance.

## Alternative Options

Based on the information gathered from other communities, City staff, including the police chief, have concerns over uniformed police officers enforcing a mandatory protective face covering ordinance. This is primarily due to the potential for negative contacts between citizens and the police department. During and after the periods of civil unrest this past summer, the police department spent significant time and energy to (re)build trust and create positive relations with members of the community, especially the young adults. The enforcement of a mandatory face covering ordinance by police officers on individuals could adversely impact the positive steps which have occurred and place officers in potential conflict situations.

Understanding, however, that the City Council wants to encourage the wearing of face coverings while in public, staff is recommending the Council consider **adopting a resolution** affirming and encouraging the wearing of protective face coverings in public within the City of Naperville as an alternative to **passing an ordinance** codifying and mandating face coverings. The two options are described below.

### **OPTION 1 - Waive the first reading and pass the ordinance codifying and mandating protective face coverings in public**

#### **The attached ordinance imposes two requirements:**

1. Individuals must wear protective face coverings in public within the City of Naperville when they cannot socially distance from people who do not live in their home; and
2. Businesses within the City of Naperville must require individuals to wear protective face coverings when at their business if they cannot socially distance from people who do not live in their home.

#### **Exceptions:**

People meeting any of the following conditions are exempt from having to wear a protective face covering in public within the City of Naperville:

1. Under two (2) years of age;
2. Medical or accessibility issues that would be compromised by having to wear a protective face covering;
3. While engaged in the protected exercise of religion;
4. While engaged in eating or drinking;
5. While engaged in outdoor physical activity such as walking or running if they are able to maintain at least a six-foot (6') social distance from other non-household persons;
6. While traveling on public roadways in motor vehicles or on bicycles or other mechanical modes of transportation;
7. Visiting a health care provider to the extent that it is necessary that protective face coverings be temporarily removed during health care exams or procedures; or
8. Health care providers or emergency responders to the extent that the performance of their work requires temporary removal of protective face coverings.

#### **Face Covering Required Examples:**

Examples of when a protective face covering is required to be worn include, but are not limited to:

1. Shopping or working at retail businesses such as grocery stores or pharmacies;
2. Picking up food from a drive thru or curbside pickup;
3. Visiting a health care provider unless required to be removed for exam purposes or health care procedures;

4. Traveling on public transportation, taxis or rideshares; and
5. Walking within Naperville's Central Business District when close interactions with other people are unavoidable.

**Violations:**

The ordinance will be effective upon passage. It provides for fines with individuals subject to a minimum \$50 fine per violation and businesses subject to a minimum \$250 for first violations and \$500 for subsequent violations.

**Enforcement:**

If the ordinance is adopted, staff will work on an enforcement plan likely using police (community service officers as well as police officers) and code enforcement officers depending on the nature and egregiousness of violations and personnel availability. Enforcement officers will be able to use their discretion to issue verbal or written warnings prior to issuing formal citations. It should again be noted that the police department has concerns over using police officers to enforce this ordinance due to potential negative impact on positive community relations and potential confrontations that may arise.

**OPTION 2 - Adopt a resolution affirming and encouraging face coverings in public**

As an alternative to an ordinance, the Council may adopt the attached resolution. The stated intent and purpose of the resolution is to preserve the health and safety of the residents of the City of Naperville. This is accomplished by affirming and encouraging the wearing of protective face coverings in public places in order to help reduce the spread of COVID-19 within the City of Naperville.

In the recitals, the resolution indicates the importance of wearing protective coverings in public. In Section 2, it provides the same clear expectations for who should be wearing protective face coverings and when. In Section 3, it directs City staff to continue and increase the City's public awareness campaign promoting the wearing of protective face coverings in public, including:

1. Placing changeable messaging signs along the entries to the downtown and/or providing education concerning existing state-wide protective face covering mandate;
2. Issuing positive reinforcement for compliance;
3. Issuing reminders/warnings for non-compliance in the downtown and other areas of concern; and
4. Enforcing state-wide protective face covering mandate against businesses who do not enforce protective face covering compliance on their premises.

Unlike the ordinance, the resolution does not amend the Municipal Code to authorize the issuance of violations to individuals for not wearing protective face coverings in public.

**FISCAL IMPACT:**

N/A