

CITY COMMISSION MEETING

November 18, 2020 at 5:30 PM

CITY COMMISSION / MUNICIPAL COURT ROOM
518 MECHANIC, EMPORIA, KS

Agenda

Meeting Items

1. Discuss Ordinance Amending City Code Sec. 16-266 Pertaining to Face Masks
2. Discuss Main Street Contract
3. SPARK Update



**If you need accommodations due to a disability to participate in this event, meeting, or activity, or alternative format of written materials contact City of Emporia Jeff Lynch, ADA Coordinator at least 48hours before the event at 620-343-4285 or jlynch@emporia-kansas.gov*

memo



TO: City Commission
CC: Mark McAnarney, City Manager
FROM: Christina Montgomery, City Attorney
DATE: November 12, 2020
SUBJECT: Mask Ordinance

The Board of County Commissioners of Lyon County, Kansas, acting in their capacity as the Lyon County Board of Health, issued a public health order on November 5, 2020. This order will be in effect from November 6, 2020 to January 14, 2021 unless modified. The public health order includes a requirement that individuals wear masks in public spaces under certain circumstances. The County public health order is similar to City Code Sec. 16-266 with additional requirements.

The City mask ordinance and the County public health order may exist simultaneously. If the Commission would like to extend the City mask ordinance, staff recommends modifying City Code Sec. 16-266 to include the same mask provisions as the County public health order for ease of enforcement. Attached is a redline ordinance proposal which demonstrates the language that would need to be added to the City ordinance to include the same provisions as the County order.

The City's current mask ordinance is scheduled to expire on November 21, 2020 at 11:59 p.m.

Sec. 16-266 Mask or other Face Coverings in Certain Circumstances.

(a) Mask or other face coverings; definitions. The following words or phrases when used in this article shall have the following meanings:

- (1) "Mask or other face covering" means a covering of the nose and mouth that is secured to the head with ties, straps, or loops over the ears or is simply wrapped around the lower face. A mask or other face covering can be made of a variety of synthetic and natural fabrics, including cotton, silk, or linen. Ideally, a mask or other face covering has two or more layers. A mask or other face covering may be factory-made, sewn by hand, or can be improvised from household items such as scarfs, bandanas, t-shirts, sweatshirts, or towels.
- (2) "Public space" means any indoor or outdoor space or area that is open to the public; this does not include private residential property or private offices or workspaces that are not open to customers or public visitors."

(b) Mask or other face coverings; when required; exemptions.

(1) All persons in the city shall cover their mouths and noses with masks or other face coverings when they are in the following situations:

- (A) While inside, or in line to enter, any indoor public space; ~~and unable to maintain a 6-foot distance between individuals (not including individuals who reside together) with only infrequent or incidental moments of closer proximity;~~
- (B) Obtaining services from the healthcare sector in settings, including but not limited to, a hospital, pharmacy, medical clinic, laboratory, physician or dental office, veterinary clinic, or blood bank, unless directed otherwise by an employee thereof or a health care provider;
- (C) Waiting for or Riding on public transportation or while in a taxi, private car service, or ride-sharing vehicle; or,
- (D) While outdoors in public spaces and unable to maintain a 6-foot distance between individuals (not including individuals who reside together) with only infrequent or incidental moments of closer proximity.

(2) All businesses, organizations and non-profit associations in the City of Emporia must require all employees, customers, visitors, members, or members of the public to wear a mask or other face covering as follows:

- (A) Employees, when working in any space visited by customers or members of the public, regardless of whether anyone from the public is present at the time; and unable to maintain a 6-foot distance between individuals (not including individuals who reside together) with only infrequent or incidental moments of closer proximity;

(B) Employees, when working in any space where food is prepared or packaged for sale or distribution to others;

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(B)(C) Employees, when working in or walking through common areas, such as hallways, stairways, elevators, and parking facilities;

(C)(D) Customers, members, visitors, or members of the public, when in a facility managed by the business or organization; ~~and unable to maintain a 6-foot distance between individuals (not including individuals who reside together) with only infrequent or incidental moments of closer proximity;~~
or

(D)(E) Employees, when in any room or enclosed area where other people (except for individuals who reside together) are present and are unable to maintain a 6-foot distance except for infrequent or incidental moments of closer proximity.

(3) The following individuals are exempt from wearing masks or other face coverings in the situations described in subsections (b)(1) and (b)(2):

- (A) Persons age five years or under—children age two years and under in particular should not wear a face covering because of the risk of suffocation;
- (B) Persons with a medical condition, mental health condition, or disability that prevents wearing a face covering—this includes persons with a medical condition for whom wearing a face covering could obstruct breathing or who are unconscious, incapacitated, or otherwise unable to remove a face covering without assistance;
- (C) Persons who are hearing impaired, or communicating with a person who is hearing impaired, where the ability to see the mouth is essential for communication;
- (D) 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 regulators or workplace safety guidelines;
- (E) Persons who are obtaining a service involving the nose 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 6-foot distance between individuals (not including individuals who reside together or are seated together) with only infrequent or incidental moments of closer proximity;

(G) Athletes who are engaged in an organized sports activity that allows athletes to maintain a 6-foot distance from others with only infrequent or incidental moments of closer proximity;

~~(H)~~ Persons who are engaged in an activity that a professional or recreational association, regulatory entity, medical association, or other public-health-oriented entity has determined cannot be safely conducted while wearing a mask or other face covering;

~~(H)(I)~~ Persons engaged in an activity or event held or managed by the Kansas Legislature;

~~(H)(J)~~ Persons engaged in a court-related proceeding held or managed by the Kansas Judiciary; and,

~~(H)(K)~~ Persons engaged in any lawful activity during which wearing a mask or other face covering is prohibited by law.

(4) It shall be an affirmative defense to any prosecution under subsection (a) or (b) that the person in violation is an individual listed under subsection (c)."

(c) Mask or other face coverings; penalties; enforcement.

(1) Any person, business or organization violating the provisions of this Section of the Code of the City of Emporia shall be guilty of an infraction. The person or persons responsible for any business or organization that does not comply with subsection(b)(2) includes a sole proprietor, or any officer, partner, member, manager, director, or other supervisor for the business or organization, who may be held jointly and severally responsible for such violation with respect to any enforcement of the violation.

(2) A violation of this section shall be punished by a fine of twenty five (\$25.00) dollars upon a first conviction, by a fine of fifty (\$50.00) dollars upon a second conviction, and by fine of one hundred dollars (\$100.00) dollars upon a third or subsequent conviction, plus court costs.

(d) Mask or other face coverings; effective term. The provisions of Section 16-266 through Section 16-268 of the city code shall be in effect until 11:59 p.m. on December 22, November 21, 2020

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memo

TO: City Commission
CC: Mark McAnarney, City Manager
FROM: Christina Montgomery, City Attorney
DATE: October 28, 2020
SUBJECT: Mainstreet Contribution Agreement

Attached is a redline copy of an updated contribution agreement proposal with Emporia Main Street to secure professional services in connection with the development of the downtown business district and economic initiatives. Following the September 30, 2020 study session, city staff drafted changes to bring this contract into uniformity with other contribution agreements. Changes have also been proposed by Main Street following their October 21, 2020 Board of Directors meeting. An Emporia Main Street representative will be available for discussion.

AGREEMENT

BY AND BETWEEN

EMPORIA MAIN STREET, INC.

AND

THE CITY OF EMPORIA, KANSAS

THIS AGREEMENT, made and entered into the ____ day of _____, 2020, by and between the City of Emporia, Kansas, a municipal corporation, hereinafter referred to as “City”, and Emporia Main Street, Inc., a Kansas nonprofit corporation, hereinafter referred to as “Main Street.”

WITNESSETH:

WHEREAS, the City appropriates certain tax dollars for the purpose of economic development; and

WHEREAS, Emporia Main Street is a non-profit agency committed to increasing consumer business, strengthening retail and professional institutions, assisting in the preservation and maintenance of the community’s heritage and promoting pride in the community’s institutions and achievements through design, promotion, business enhancement & organization; and

WHEREAS, the City desires to make a contribution to Emporia Main Street to support its plan of work and thus secure professional services in connection with the development of the downtown business district, as well as economic initiatives impacting the region; and

WHEREAS, the Governing Body of the City deems it advisable, proper and beneficial to the interests of the citizens of Emporia to stimulate economic development and to maintain a vibrant and prosperous downtown business district and community.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions contained herein, the parties agree as follows:

1. The City agrees to make a contribution to Main Street to procure certain technical and professional services and to make policy recommendations associated with commercial economic development, housing and entrepreneurial programs in accordance with the terms and conditions contained herein and Main Street does hereby agree to accept such contribution in accordance with such terms and conditions.

2. The City contribution in support of Main Street shall be used to support the plan of work as represented in Main Street's annual operating budget as submitted and reviewed by the City Commission for the next fiscal year. The City contribution is to be paid annually on or before the 28th day of February. Main Street shall provide to the City a quarterly statement of income and expenditures for the preceding months including a description of items and/or work funded by city contributions and certifying that all monies received under this agreement have been expended only for those activities. Main Street shall provide to the City a copy of their annual 990 federal filing for the most recent calendar year. The City contribution shall not be used to make loans to individual board members.

3. Main Street shall at any time during normal business hours make available to the City or its designated representative all financial records of the organization including payrolls, invoices, contracts vouchers or other official documents evidencing in proper detail the nature and propriety of the charges. All financial documents of the organization shall be retained for a period of two years after the completion of each annual fiscal year. As a condition of financial support, the City requires the organization to obtain an annual accounting report from a Certified Public Accountant. The CPA report prepared as to the activities conducted and funds expended pursuant

to this agreement in the preceding year shall be delivered to the City upon completion no later than May 15 of each year.

4. The term of this agreement shall commence upon its execution and end on June 30, 2021. The annual agreement will renew each year for additional one (1) year terms upon the appropriation of the governing body of an annual contribution to Main Street upon a plan of work outlined in Main Street's annual operating budget as submitted to the City. The failure of Main Street to submit an annual operating budget by May 1 or of the City to appropriate funds shall cause this agreement to terminate as of June 30 of the current operating year.

5. Notwithstanding the fact that the City has funded a contribution pursuant to this agreement or that this agreement has been partially performed by the parties hereto, either party shall have the right to cancel this agreement at any time by providing ninety (90) days written notice of cancellation of this agreement to the other party. A breach of this agreement includes, but is not limited to, failure to comply with any terms or conditions contained within this agreement, any exhibit hereto, or any amendments to this agreement. Upon breach of this agreement by Main Street, the City may withhold any funds not yet delivered and terminate this agreement.

6. It is specifically agreed by the parties that this agreement does not create a joint venture agreement, partnership, employment agreement or agency agreement between the parties. Main Street agrees to indemnify and hold harmless the City, its Commissioners, and employees from liability for any and all claims and causes of action of any person, business entity or any entity for any damages of any type whatsoever that might be sustained because of the activities carried out by Main Street, its Board members, officers, agents and employees.

7. Main Street covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner with the performance of the commercial economic development services to be performed under this agreement. Main Street further covenants that in the performance of this agreement, no person having any such interest shall be employed. No officer, Board member or employee shall participate in any decision relating to this Agreement which affects their personal interest or have any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.

8. Main Street shall not assign or transfer any interest in this agreement.

9. No recipient or proposed recipient of any funds, services, or other assistance under the provisions of this agreement or any program related to this agreement shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with the funds made available through this agreement on the grounds of race, color, sex, religion, national origin, ancestry, physical handicaps, disability, or age.

10. Main Street shall comply with all applicable ordinances and statutes of Emporia, the State of Kansas and the federal government.

11. The City may reduce the amount of funds authorized if budget restrictions or reductions are placed on the funds utilized for this agreement due to national, local or state emergency; "acts of god"; or short falls in collection of revenue.

12. Main Street's cash carry-forward from the City's contribution shall be limited to twenty-five percent (25%) of the prior year's contribution beginning with carry-forward from the 2021 fiscal year. The calculation of the cash carry-forward shall be determined within thirty (30)

days of the close of the fiscal year. Any cash carry-forward in excess of the limit shall be remitted to the City by the following February 15.

13. This agreement may be amended by a written instrument executed by the parties hereto.

14. Main Street shall cooperate fully with the City and consult with the City in receiving recommendations concerning programs to be implemented and expenditures to be made.

15. Time is of the essence of this agreement.

16. The City shall have and exercise one (1) board appointment to the Main Street Board of Directors, which shall be a voting member for all purposes. Such member shall be subject to the Main Street bylaws and requirements for membership. The City shall also have and exercise one (1) City staff appointment as a non-voting ex officio member as designated by the City Manager.

IN WITNESS WHEREOF, the parties have executed this agreement as of the date and year first written above.

CITY OF EMPORIA, KANSAS

Danny Giefer, Mayor

Attest:

Kerry Sull, City Clerk

EMPORIA MAIN STREET, INC.

Casey Woods, CEO

Attest:

Secretary

Memo

To: City Commission
From: Jim Witt, SPC
cc: Mark McAnarney
Date: 11/12/20
Re: Spark UPDATE

City Staff will present an update on the status of our Spark fund expenditures and related issues. The two major facility projects to be completed by 12-25-20 are the installation of the air filtration systems and the touchless faucets. The testing allocation was transferred to a software project enabling the processing of online payments by citizens by transferring their transaction to the cloud. This shall eliminate any VPN connections and potential hacking will not be a concern. This will also accommodate said processing by staff working externally.

Attached are two emails from Newman Regional and FHHC regarding the testing project.

Project COVID19
Project 20SPARKS
11/10/2020

	Budget amount	Amount Spent	Amount needed to finish Project	Unallocated amount
Expenses				
Air Filtration System	175,000.00	-	100,000.00	75,000.00
Electrostatic Disinfectant sprayers	25,517.00	7,638.26	13,872.82	4,005.92
Walk Thru temp gates	25,000.00	21,048.00	4,000.00	(48.00)
PPE	35,000.00	27,356.77	-	7,643.23
Personnel	40,000.00	63,965.39	25,000.00	(48,965.39)
Testing/Cloud Migration	30,000.00	450.00	27,000.00	2,550.00
Touchless faucets & toilets	75,000.00	-	90,000.00	(15,000.00)
March thru July Reimbursement	104,741.46	104,741.98	-	(0.52)
Hot spots for Library	15,000.00	14,809.20	-	190.80
Total Expenses	525,258.46	240,009.60	259,872.82	25,376.04

Amount from County

525,258.46

From: Jennifer J. Millbern <jmillbern@flinthealth.org>
Sent: Monday, October 26, 2020 9:42 AM
To: Jim Witt <jwitt@emporia-kansas.gov>
Subject: RE: Lyon County Close Contact Testing Data

Good morning, Jim! I am sure you have heard that KDHE is now allowing local health departments to do close contact testing. Because of this I am not sure how many individuals will be utilizing the close contact testing program we collaborated on. Do we need to come together and discuss this or are you set to reallocate the dollars somewhere else? Thanks

From: Wright, Robert <rwright@newmanrh.org>
Sent: Wednesday, October 21, 2020 11:24 AM
To: Jim Witt <jwitt@emporia-kansas.gov>
Subject: RE: Good Morning!

Jim, I am.

Also I am copying an email that Ester sent me yesterday below so that you are aware.

KDHE has updated their definition of a PUI. Individuals only need to have one symptom to qualify for testing at KHEL. Additionally, they are now accepting asymptomatic close contact tests. PH will be able to offer their own close contact testing. This removes the need for the high-consequence close contact testing agreement we established with the City of Emporia. Jennifer Millburn is going to reach out to Jim Witt to set-up a meeting time to discuss where we go from here.

Have a great day.

Bob