

The Mount Vernon City Council met September 21, 2020 at the LBC with the following members present: Roudabush, West, Wieseler, Herrmann and Rose. All guests are required to wear masks unless they are able to maintain a 6 foot separation during the meeting.

Call to Order. At 6:30 p.m. Mayor Jamie Hampton called the meeting to order.

Agenda Additions/Agenda Approval. The Comprehensive Plan and Land Use Map for the Creation of the Hwy 30 Bypass Overlay District will remain tabled. Motion to approve the Agenda made by Wieseler, seconded by West. Motion carries.

Consent Agenda. Motion to approve the Consent Agenda made by Herrmann, seconded by West. Motion carries.

Approval of City Council Minutes – September 8, 2020 Regular Council Meeting

Appoint Donald Moore and Duane Eash – Historic Preservation Commission (filling vacated positions)

Public Hearing

Public Hearing for the Amendment to the Comprehensive Plan and Land Use Map for the Creation of the Hwy 30 Bypass Overlay District (to remain tabled). The public hearing will remain tabled until staff can conduct additional public information meetings with the public. The 1st will be an in-person meeting scheduled for Monday, September 28, 2020 at the LBC from 6 to 9:00 p.m. The 2nd meeting will be conducted via Zoom on Wednesday, October 7, 2020 at 6:00 p.m.

Ordinance Approval/Amendment

Ordinance #8-17-2020A: Amending Chapter 135 Street Use and Maintenance of the Mount Vernon Municipal Code. Motion to approve second reading and proceed to the third and final reading (Council may suspend rules and proceed to the third and final reading after a vote of the second reading). Staff has not received any written or verbal communication on this ordinance since the first reading. Motion to approve the second reading of Ordinance #8-17-2020A made by Wieseler, seconded by Rose. Roll call all yes. Ordinance passes the second reading.

Ordinance #9-8-2020A: Amending Chapter 15 Mayor of the Mount Vernon Municipal Code. Motion to approve second reading and proceed to the third and final reading (Council may suspend rules and proceed to the third and final reading after a vote of the second reading). Staff has not received any written or verbal communication on this ordinance since the first reading. Motion to approve the second reading of Ordinance #9-8-2020A made by West, seconded by Herrmann. Roll call all yes. Ordinance passes the second reading.

Ordinance #9-8-2020B: Adopting Chapter 49 Mandating Face Coverings During Public Health Emergencies of the Mount Vernon Municipal Code. Motion to approve second reading and proceed to the third and final reading (Council may suspend rules and proceed to the third and final reading after a vote of the second reading). Addressing Council, Shannon Thompson, an attorney representing Hunter Parks, stated that Mr. Parks is concerned that the City does not have the legal authority to adopt or impose penalties related to the mask mandate and mask ordinance. Thompson said it is not about the masks or if mask use is advisable. It's about the City Council exceeding statutory authority and what consequences it could have in the future. City Administrator Chris Nobsch was asked to read an email from Keith Huebner.

Mr. Huebner was not able to attend the meeting and is not in favor of the mask ordinance. Mr. Huebner's email is posted on the City's website (www.cityofmtvernon-ia.gov under Agendas and Minutes). Nobsch also read the letter from Pugh Hagan Prahm PLC attorney Siobhan Briley who represents Global Water Services, LLC and strongly opposes the Council's adoption of Ordinance #9-8-2020B. The last paragraph reads: "If the Council votes to adopt the ordinance, GWS will immediately seek injunctive relief to enjoin its enforcement." This letter is also on the city's website. The City's attorney said it is difficult to know how this will go because it hasn't been fought in the legal system yet. Motion to approve the second reading of Ordinance #9-8-2020B made by Wieseler, seconded by Rose. Roll call vote. Ayes: Herrmann, Wieseler, Rose, West. Nays: Roudabush. Ordinance passes the second reading.

Resolutions for Approval

Resolution #9-8-2020D: Amending the Mt. Vernon Comprehensive Plan and Land Use Map for the Creation of the Hwy 30 Bypass Overlay District (to remain tabled).

Resolution #9-21-2020A: Approving the Department of Transportation Street Finance Report for FY 2020. The Street Finance Report is an annual report required by the Iowa DOT regarding the receipt and use of road use tax monies. Motion to approve Resolution #9-21-2020A made by Wieseler, seconded by Herrmann. Roll call all yes. Resolution #9-21-2020A passes.

Motions for Approval

Consideration of Claims List – Motion to Approve. Motion to approve the Claims List made by Herrmann, seconded by West. Motion carries.

AIRGAS INC	WELDING SUPPLIES-PW	111.47
ALL SECURE	SECURITY SYST MONTIORING-POOL	75.00
ALLIANT IES UTILITIES	ENERGY USAGE-SEW	5,813.49
ALLIANT IES UTILITIES	ENERGY USAGE-WAT	5,430.32
ALLIANT IES UTILITIES	ENERGY USAGE-ST LIGHTS	3,998.46
ALLIANT IES UTILITIES	ENERGY USAGE-FD	759.53
ALLIANT IES UTILITIES	ENERGY USAGE-PD	728.55
ALLIANT IES UTILITIES	ENERGY USAGE-SEW	698.28
ALLIANT IES UTILITIES	ENERGY USAGE-P&REC	398.72
ALLIANT IES UTILITIES	ENERGY USAGE-RUT	354.81
ALLIANT IES UTILITIES	ENERGY USAGE	330.72
ALLIANT IES UTILITIES	ENERGY USAGE-P&A	187.66
ALLIANT IES UTILITIES	ENERGY USAGE-PD,RUT	112.12
ALLIANT IES UTILITIES	ENERGY USAGE-POOL	88.19
ALLIANT IES UTILITIES	ENERGY USAGE-RUT,P&A,WAT,SEW	68.84
ALLIANT IES UTILITIES	ENERGY USAGE-EMA	46.68
ALLIANT IES UTILITIES	ENERGY USAGE-CEM	15.24
ALTORFER INC	GENERATOR MAINT-P&A	22.40
ALTORFER INC	GENERATOR MAINT-RUT	15.82
BARNYARD SCREEN PRINTER LLC	T-SHIRTS-P&REC	1,893.00
BARNYARD SCREEN PRINTER LLC	BAGS-P&REC	425.00
BARNYARD SCREEN PRINTER LLC	UNIFORMS-LBC	328.00
BAUER BUILT TIRE	TIRE DAMAGE-RUT	398.54
BAUER BUILT TIRE - CEDAR RAPIDS	EQUIPMENT MAINT-PW	1,283.36
BRADLEY HAUGE CPA	PROFESSIONAL-SERVICES-RUT,P&A	6,405.00
CALEB DAUSENER	REFEREE-P&REC	60.00
CAMPBELL SUPPLY CEDAR RAPIDS	DRIVER 3/8-RUT	231.63
CENTRAL IOWA DISTRIBUTING	SUPPLIES-LBC	113.00
CENTRAL IOWA DISTRIBUTING	SUPPLIES-LBC	86.00

CENTRAL IOWA DISTRIBUTING	SUPPLIES-LBC	122.93
CENTURY LINK	PHONE CHGS-PD	124.40
CITY LAUNDERING CO	SERVICES-LBC	444.99
CULVERS LAWN & LANDSCAPE INC	STORM DAMAGE-LBC	410.40
DAN DEININGER	REFUND-LBC	84.00
EASTERN IOWA EXCAVATING	3RD STREET NATURE TRAIL	79,556.48
ECICOG	HOUSING REHAB PROGRAM-LMI	500.00
ELDON DOWNS	CORDLESS DRILL STORAGE-RUT	143.14
ELLIS IMPLEMENT INC	SICKLE BAR-RUT,P&REC	1,173.58
GALLS INC	BULLET PROOF VESTS-PD	2,665.00
GROUP SERVICES INC	INSURANCE-ALL DEPTS	5,875.50
H2I GROUP	BARRIER NETTING-LBC CONSTR	6,300.00
IMWCA	AUDIT PREMIUM ADJUSTMENT-INS LEVY	14,322.00
IOWA ASSOC OF MUNICIPAL UTILITIES	MEMBERSHIP-PW	1,234.76
IOWA DEPT OF TRANSPORTATION	SALT-RUT	916.00
IOWA SOLUTIONS INC	SONICWALL COMP GATEWAY SECURITY	709.00
IOWA SOLUTIONS INC	COMP MAINT-LBC,P&A	367.50
JACOB MASTERS	REFEREE-P&REC	100.00
JOENA'S SPECIAL NEEDS	UNIFORMS-PD	34.00
JORDAN AXTELL	REFEREE-P&REC	260.00
KAYDEN PENDERGRASS	REFEREE-P&REC	60.00
KINGS MATERIAL INC	BUNKER BLOCK-SW	1,431.79
KINGS MATERIAL INC	BUNKER BLOCK-SW	1,431.79
KINGS MATERIAL INC	BUNKER BLOCK-SW	1,328.89
KONICA MINOLTA BUSINESS SOLUTIONS	MAINTENANCE PLAN/COPIES-ALL DEPTS	229.35
KONICA MINOLTA BUSINESS SOLUTIONS	MAINTENANCE PLAN/COPIES-LBC	23.72
L.L. PELLING CO INC	SEALCOAT PROJECT-RUT	17,128.50
L.L. PELLING CO INC	SEALCOAT PROJECT-RUT	17,061.75
L.L. PELLING CO INC	SEALCOAT PROJECT-RUT	10,659.15
LBC BANKCARD 8076	CREDIT CARD FEES-LBC	99.64
LINN CO-OP OIL CO	FUEL-S/W	9,820.49
M & K DUST CONTROL	HAUL STORM DEBRIS-S/W	45,280.00
MARKET STREET TECHNOLOGIES INC	WORDPRESS WEBSITE RENOVATION	500.00
MATT SIDERS	MILEAGE-P&REC	66.13
MEDIACOM	PHONE/INTERNET-POOL	183.54
MEDIACOM	PHONE/INTERNET-P&A	276.60
MEDIACOM	PHONE/INTERNET-PW	181.50
MID COUNTRY MACHINERY INC	COMPOST SCREENER-S/W	6,000.00
MIDWEST FRAME & AXLE	HOSES-RUT	432.36
MOUNT VERNON LISBON SUN	ADS/PUBLICATIONS-P&REC	180.00
MT VERNON CAR WASH	CAR WASH-PD	24.00
NEAL'S WATER CONDITIONING SERVICE	WATER,SALT-RUT,P&REC,P&A	69.00
OVERHEAD DOOR CO	DOOR DAMAGE-P&REC	157.50
P&K MIDWEST INC	HARDWARE-RUT	30.20
PAYROLL	CLAIMS	77,942.61
PLUMB SUPPLY CO	SOAP DISPENSER-LBC	289.52
RHINO INDUSTRIES INC	POLYMER-SEW	694.00
ROTO-ROOTER	PUMP CLARIFIER-SEW	250.00
RTL EQUIPMENT	EXCAVATOR W/GRAPPLE RENTAL	1,200.00
SIMMONS PERRINE MOYER BERGMAN	LEGAL FEES-P&A	4,147.00
SIMMONS PERRINE MOYER BERGMAN	LEGAL FEES-P&A	2,633.00
SIMMONS PERRINE MOYER BERGMAN	LEGAL FEES-P&A	1,644.50
SIMMONS PERRINE MOYER BERGMAN	LEGAL FEES-P&A	958.50
STAPLES INC	SUPPLIES-PD,P&A	368.21

STAPLES INC	ROLL PAPER-PD	174.84
TOTAL TREE CARE OF IOWA CITY	TREE MAINT-S/W	15,840.00
TYLER PANOS	REFEREE-P&REC	60.00
WADE LUTHER TREE SERVICE	TREE MAINT-RUT	3,300.00
WAPSI WASTE SERVICE	STORM DUMPSTER-S/W	2,196.01
WRH INC	WWTP IMPROVEMENTS 2019	50,624.38
TOTAL		420,801.98

GENERAL FUND	25,281.75
INSURANCE LEVY	14,322.00
LBC	2,136.20
LOST III COMMUNITY CENTER	6,589.52
LOST III TRAILS	79,556.48
LOW-MODERATE INCOME FUND	500.00
PAYROLL	77,942.61
ROAD USE TAX FUND	58,365.56
SEWER FUND	10,472.42
SOLID WASTE	86,387.80
STORM WATER FUND	170.39
WATER FUND	8,452.87
WWTP UV DISINFECTION	50,624.38
TOTAL	420,801.98

Discussion and Consideration of Quotes for the Grinding of Storm Debris – Council Action as Needed. RFP's were sent to five contractors regarding storm brush grinding. All five provided costs for their services plus the size of equipment they would be grinding with. Bockenstedt Excavating was the apparent low bid and the one staff recommends using. Their rate is \$345.00 per hour plus mobilization costs of \$1,375.00 and would take about two days to complete. Motion to approve the RFP from Bockenstedt Excavating made by Rose, seconded by Wieseler. Motion carries.

Discussion and Consideration of Purchasing Generator for the LBC – Emergency/Disaster Preparations – Council Action as Needed. Council was asked to approve up to \$160,000.00 for a generator for the LBC which will be paid from the LBC construction fund. The purchase of a generator moves the LBC one step closer to becoming a storm shelter. Motion to approve up to \$160,000.00 for the purchase of a generator at the LBC made by West, seconded by Wieseler. Ayes: Herrmann, Wieseler, Rose, West. Nays: Roudabush. Motion carries.

Discussion and Consideration of Office Equipment Purchases – City Hall – Council Action as Needed. Council was asked to approve \$41,886.06 for the 2nd half of the office furnishings. The carpet has been laid in the conference rooms and north offices. Motion to approve the phase II office furnishings at a cost of \$41,886.06 made by Herrmann, seconded by Wieseler. Ayes: Herrmann, Wieseler, Rose, West. Nays: Roudabush. Motion carries.

Discussion and Consideration of Appointing Eldon Downs to the Position of Public Works Director – Council Action as Needed. With the resignation of Nick Nissen Council was asked to confirm the appointment of Eldon Downs to the position of PW Director with a starting salary of \$78,405.50. Motion to approve the appointment of Eldon Downs to PW Director made by Wieseler, seconded by West. Motion carries.

Reports to be Received/Filed

Mt. Vernon Police Report. There were 4 collisions and 21 incidents reported in August. The incidents included fraud, sexual abuse, hit and run, trespassing, theft and more. There were 5 arrests in August. K9 Monster was deployed 3 times. Officers worked 12.5 hours of STEP. Per the 28E agreement with Lisbon the MVPD provided 5,510 minutes of patrol time, 26 calls for service and 295 minutes of administrative time for a total of \$4,390.00.

Mt. Vernon Public Works Report. City crews continue to work on the derecho clean up. They are also working on the leaf pickup project. The LBC trail work has begun and so has the South Alley project.

Mt. Vernon Parks and Rec Report. Damage assessment continues in the parks. Flag Football has 10 teams with 90 participants. Fall Soccer has 15 teams with 150 participants. The pool did not sustain any major damage due to derecho. The LBC, also, did not sustain a lot of damage. About ¼ of the fence was damaged and quite a few trees were lost.

Discussion Items (No Action)

Possible Damaged Tree Discussion (derecho storm). A certified arborist reviewed the damage to the ROW trees. About 215-220 trees will be removed or trimmed. There will be a tree replacement program in the future.

Reports of Mayor/Council/Administrator

City Administrator's Report. Staff has begun the process of working with FEMA for both the COVID and derecho disasters. Goal setting questionnaires were sent to Council and department heads. A meeting with CDG will be coming up regarding the reduction in hotel/motel tax payments and additional budget issues tied to Covid.

As there was no further business to attend to the meeting adjourned the time being 7:41 p.m., September 21, 2020.

Respectfully submitted,
Sue Ripke
City Clerk

Chris Nosbisch

From: khuebner@globalwaterservices.com
Sent: Monday, September 21, 2020 2:28 PM
To: Chris Nosbisch
Cc: Rich Eskelsen
Subject: For Council meeting tonight

Chris,

Please read the following into the record. In addition to the letter submitted by our Corporate Lawyer.

To the Mt Vernon Council: I would have attended the meeting tonight via Zoom as has been the operation for the recent past. I find it hilariously disgusting however, that at an in person meeting where we are discussing fining people for not wearing masks, why we can't attend remotely which would negate the need to wear a mask in the first place. Do any of you actually think about these decisions before you make them? I also want to reiterate how inappropriate it appears when 3 Council people are on Facebook on 03July discussing their displeasure with, and ways around the Governors orders and opinions presented by the Attorney General. While the 60 days have expired for an official complaint with the Public Information Board, I have copies of the thread for anyone that is interested.

Regards,

Keith Huebner,

NOTICE: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.



ATTORNEYS & COUNSELORS

425 E. OAKDALE BLVD.
SUITE 201
CORALVILLE, IOWA 52241
PHONE 319-351-2028
FAX 319-351-1102

PUGHHAGAN.COM

SBRILEY@PUGHHAGAN.COM

September 21, 2020

VIA EMAIL

City of Mount Vernon
City Council
City Hall
213 First Street NW
Mount Vernon, IA 52314

Re: Objection to Ordinance #9-8-2020B, Mandating Face Coverings in Public

Dear Council Members:

This office represents Global Water Services, LLC, which owns property and does business in Mt. Vernon, Iowa. GWS strongly opposes the Council's adoption of Ordinance #9-8-2020B, mandating that all residents of Mt. Vernon wear face coverings in public (with limited exceptions) or risk being fined \$50. I have conducted in-depth research on this topic, including review of two opinions issued by the Iowa Attorney General's ("AG") office, and I have concluded that the City does not have the authority to issue a directive that its citizens wear face coverings.

On March 24, 2020, the AG's office issued an informal opinion in which it concluded that cities and counties do not have the authority to issue public health-related orders, including "shelter in place" orders and ordinances requiring face coverings. A copy of this informal opinion is enclosed for your reference ("March 24 Opinion"). The AG's office is regarded as an expert on interpreting Iowa law, especially concerning issues of governmental authority. Thus, although the opinion is not published, it carries significant authoritative weight. The AG confirmed its views in a June 23, 2020, letter to State Senator Zach Wahls, which is also enclosed ("June 23 Letter").

In the March and June opinions, the AG further concluded that, "while the Statewide Disaster Emergency Proclamations are in place, the Governor retains the power to delegate, sub-delegate, or retain the administrative authority under Iowa Code Chapter [29]C (Emergency Management) to issue directives" such as mandating face coverings. June 23 Letter at 1. The Governor may delegate this authority but is not required to do so. Iowa Code § 29C.6(10). To date, the Governor has not delegated her authority under Chapter 29C. Furthermore, Iowa Code § 135.144 empowers the Iowa Department of Public Health ("IDPH"), "in conjunction with the Governor, to take reasonable measures as necessary to prevent the transmission of infectious disease," and "to inform the public of the protective measures to take during the disaster." Iowa Code § 135.144(3) and (9).

Taken together, Iowa Code Chapters 29C and 135 allow *only* the Governor, with the input and assistance the IDPH, to determine and implement the "reasonable measures" necessary to prevent

PUGH HAGAN PRAHM PLC

September 21, 2020

Page 2

the transmission of infectious diseases. As a result, cities' and counties' Home Rule authority, as granted by the Iowa Constitution, is not implicated.

Home Rule gives Iowa cities and counties powers "not inconsistent with the laws of the general assembly, to determine their local affairs and government, except that they shall not have the power to levy any tax unless expressly authorized by the general assembly." Iowa Constitution, Art. III, Section 38A. A city's mandate that all citizens wear face coverings in public is inconsistent with the laws of the general assembly because the general assembly has granted exclusive authority in this area to the Governor and the IDPH. Accordingly, cities' authority to issue directives and/or to require the public to take protective measures not ordered by the Governor or the IDPH is preempted by Iowa Code Chapters 29C and 135. *See City of Des Moines v. Gruen*, 457 N.W.2d 340, 342 (Iowa 1990) (municipal ordinance is preempted where it is "inconsistent with a law of the general assembly" and "prohibits an act permitted by a statute, or permits an act prohibited by a statute").

Given that the City lacks the authority to require citizens to wear face coverings in public, GWS respectfully requests that the Council reconsider its decision to adopt Ordinance #9-8-2020B. If the Council votes to adopt the ordinance, GWS will immediately seek injunctive relief to enjoin its enforcement.

If you would like to discuss this matter further, please do not hesitate to contact me.

Sincerely,

PUGH HAGAN PRAHM PLC



Siobhan Briley

SB/ecr

Enclosures

cc: Global Water Services, LLC

From: Adams, Heather [AG]
Sent: Tuesday, March 24, 2020 5:07 PM
To: Langholz, Sam <sam.langholz@iowa.gov>; Michael Boal <michael.boal@iowa.gov>
Cc: Reisetter, Sarah [IDPH] <Sarah.Reisetter@idph.iowa.gov>
Subject: county and city authority

You have asked for analysis on the question of the legal authority of counties and cities to enact local measures to require citizens of their jurisdictions to shelter in place during the current health public health disaster emergency. This analysis was drafted by Mike Bennett in my office with a review by Jeff Thompson, myself, and others. Please let us know if you have any further questions or research requests in this area.

County and City Home Rules Powers:

Article III, Section 38A and Section 39A contain the City and County Home Rule provisions in the Iowa Constitution. The powers granted cities and counties under these constitutional amendments are to determine their local affairs and government, not inconsistent with the laws of the General Assembly, except that they shall not have power to levy any tax unless expressly authorized by the general assembly. Counties are also constrained in their home rule powers if that power conflicts with the power of a city, providing a city power will prevail within its jurisdiction.

When an ordinance prohibits an act permitted by a statute, or permits an act prohibited by a statute, the ordinance is considered inconsistent with state law and is preempted. See *City of Des Moines v. Gruen*, 457 N.W.2d 340, 342 (Iowa 1990). Implied preemption occurs when the legislature has covered a subject by statutes in such a manner as to demonstrate a legislative intention that the field shall be preempted by state law.

The powers exercised by cities under the Home Rule Amendments have been generally categorized as “police powers”. These include the power of cities and counties to protect rights, privileges, and property of the city and county and to preserve and improve the peace, safety, welfare, comfort and convenience of their residents. Iowa Code Section 331.301 (county) and Iowa Code Section 364.1 (City). These powers may be exercised by cities and counties subject to limitations expressly imposed by a state law, and are barred if such actions are irreconcilable with state law. Under Iowa Code Sections 331.301 and 364.3, City mayors are further empowered to govern the city by proclamation during a time of emergency or public danger. Iowa Code Section 372.14.

These authorities generally indicate authority for cities and counties to act to protect the safety of the residents of their communities yet require cities and counties to yield where the powers are inconsistent with powers of the state.

State Powers

A public health disaster is defined in Iowa law as a state of disaster emergency proclaimed by the Governor in consultation with the Department of Public Health for a

disaster that involves an imminent threat of a health condition caused by the appearance of a novel infectious agent and that poses a high probability of a large number of serious health consequences. Iowa Code § 135.140(6). During a public health disaster, the Governor and the Department of Public Health have broad legal authority to take all reasonable measures necessary to prevent the transmission of the virus and to prevent, control, and treat the infectious disease. These legal authorities are contained in part at Iowa Code sections 135.144 and 29C.6. These authorities include the powers to “control ingress and egress to and from a disaster area, the movement of persons within the area, and the occupancy of premises in such area.” Iowa Code § 29C.6(15).

Iowa Code Section 29C.6 (8) allows the Governor to delegate and sub-delegate any administrative authority under the Emergency Management Chapter. This indicates the Governor may delegate powers under emergency powers under that section to local authorities to address the current public health emergency, including the power to place restrictions on movement within the communities. This likewise indicates the Governor may choose not to delegate this authority to local agencies.

Conclusion: While cities and counties have police powers to protect the health and safety of their citizens, the State has the authority to declare and coordinate the response to a public health disaster. This includes the power of the Governor to sub-delegate administrative authority to cities and counties, including the power to restrict movement within communities by these local authorities. This power also would allow the Governor discretion to retain such powers and not delegate this authority to cities or counties.



Heather L. Adams

Assistant Attorney General

Office of the Attorney General of Iowa

1305 E. Walnut St.

Des Moines, Iowa 50319

Main: (515) 281-5164 | Direct: (515) 281-3441

Email: Heather.Adams@ag.iowa.gov | www.iowaattorneygeneral.gov

CONFIDENTIALITY NOTICE: This email message (including any attachments) may be confidential or protected by one or more of the following: the attorney-client privilege, attorney work product doctrine, or applicable laws. If you are not the intended recipient or have received this message in error, please: (1) do not read, print, copy, distribute or use it in any way; (2) permanently delete or destroy the message (including any attachments); and (3) notify the sender immediately by reply email or telephone. Any unintended transmission of this email message does not constitute a waiver of any applicable privilege or protection. Thank you.

THOMAS J. MILLER
ATTORNEY GENERAL



1305 E. WALNUT ST.
DES MOINES, IA 50319
P: 515-281-5164
www.iowaattorneygeneral.gov

IOWA DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

June 23, 2020

The Honorable Zach Wahls
201 E 9th St., #415
Coralville, IA 52241
zach.wahls@legis.iowa.gov

Dear Senator Wahls:

You contacted the Iowa Attorney General's Office regarding the power of cities or counties to pass local regulations requiring patrons of business to wear masks. A similar question was answered by this office in a question from city officials in March of this year regarding the power of local officials to issue shelter in place orders. I have attached a copy of that analysis to this correspondence for your review.

In this previous analysis, we determined that while the Statewide Disaster Emergency Proclamations are in place, the Governor retains the power to delegate, sub-delegate, or retain the administrative authority under Iowa Code Chapter 28C (Emergency Management) to issue directives of this nature. *Please see* Iowa Code Section 28C.6(8) (enclosed). Iowa Code Section 135.144(3) and (9) (enclosed) empowers the Iowa Department of Public Health, in conjunction with the Governor, to take reasonable measures as necessary to prevent the transmission of infectious disease, to inform the public when a public health disaster has been declared or terminated, and to inform the public of the protective measures to take during the disaster.

The Governor has addressed usage of personal protective equipment (PPE) in prior proclamations, including the proclamations of 5/25/2020 and 6/10/2020, which are still applicable and which provide that in re-opening of public use facilities and businesses that proprietors must adhere to hygiene practices and public health measures consistent with guidance issued by the Iowa Department of Public Health. Any local action or regulation would need to be consistent and compliant with the Governor's Proclamations and the Iowa Department of Public Health Directives in scope and remedies while the Governor's Emergency Proclamations are in place.

Finally, local regulation of this nature, if not preempted under the current Emergency Disaster Proclamations, would likely be under the jurisdiction of local boards of health under their power under Iowa Code Section 137.104(1)(b) (enclosed) to, "make and enforce such reasonable rules and regulations, not inconsistent with law and the rules of the state board, as may be necessary for the protection and improvement of the public health."

The Honorable Zach Wahls
State Senator
Page 2

I hope you find this helpful in answering this question. Please be advised this contains the results of my research and analysis on your question but is not an official opinion of the Iowa Attorney General's Office.

Best regards,

Michael L. Bennett
Assistant Iowa Attorney General
PATC Division
michael.bennett2@ag.iowa.gov