

# City of Des Moines



## PROCLAMATION AMENDMENT

**WHEREAS**, on March 15, 2020 and by amendments on March 17, June 5, July 31 and August 26, I determined that a state of emergency or public danger existed and directed restrictions on all gatherings on public property or public right-of-way; and

**WHEREAS**, COVID-19 continues to pose a serious and potentially deadly threat to the public and the public health as the Federal Center for Disease Control (“CDC”) guidance notes that large events and mass gatherings can contribute to the spread of COVID-19 in the United States by greatly contributing to the spread of the virus to communities; and

**WHEREAS**, the Governor of Iowa by Proclamation dated December 9 continues to strongly encourage all vulnerable Iowans to continue to limit their activities outside their home including participation in gatherings of any size and any purpose and she continues to encourage all Iowans to limit and to exercise particular care and caution with in-person interactions with vulnerable Iowans and the CDC has noted that events of any size should only be continued if they can be carried out with adherence to guidelines for protecting vulnerable populations, hand hygiene and social distancing; and

**WHEREAS**, new positive cases of the virus continue at an alarming rate resulting in significant community spread in Polk County and in the City of Des Moines, putting the health care system and City residents in immediate danger with no end in sight to this alarming rate of infection; and

**WHEREAS**, predictive modeling shows that Polk County could be heading toward another spike in COVID-19 cases and as winter weather has reduced opportunities for outdoor activities and with the anticipated occurrence of holiday gatherings, the community must be prepared to respond to an increase in virus cases should it occur and the universal use of face coverings and limitation on the size of gatherings in our community may be the best way to reduce the spread of the virus, save lives and keep businesses open and operating; and

**WHEREAS**, Article III, Section 38A of the Iowa Constitution grants municipalities the power to determine their local affairs and government not inconsistent with the laws of the general assembly; and

**WHEREAS**, Chapter 364 of the Iowa Code reaffirms the constitutional grant of home rule authority to a municipality “to exercise any power and perform any function it deems appropriate to protect and preserve the rights, privileges and property of the city or its residents, and improve the peace, safety, health, welfare and convenience of its residents”; and

**WHEREAS**, a “city may exercise its general powers subject only to limitations expressly imposed by a state or city law,” and the exercise of a city power “is not inconsistent with a state law unless it is irreconcilable with the state law.” Iowa Code section 364.2(2) and (3); and

**WHEREAS**, a city may set standards “more stringent than those imposed by state law, unless a state law provides otherwise.” Iowa Code Section 364.3(a); *City of Des Moines v. Gruen*, 457 N.W.2d 340, 343 (Iowa 1990); *Bryan v. City of Des Moines*, 261 N.W.2d 685, 687 (Iowa 1978); and

**WHEREAS**, chief among the powers of local government is the power to promote and protect the health and safety of its residents, especially during a time when public health is in danger; and

**WHEREAS**, Iowa Code Section 372.14(2) and the City of Des Moines Municipal Code Section 2-168 grant the Mayor powers in emergency circumstances when public danger exists to take extraordinary steps to protect the public health and safety.

**WHEREAS**, pursuant to the powers vested in the Mayor under Iowa Code Section 372.14(2) and City of Des Moines Municipal Code Section 2-168, I have issued several proclamations due to the dangers presented by COVID-19 and I have determined that additional extraordinary measures are necessary to protect and not worsen the health, safety and welfare within the community; and

**WHEREAS**, as certain schools remain open, exposure of children to large groups of other children presents serious health risks to even larger groups of persons, both as to children, teachers and staff and to parents and those coming in contact with the children, teachers and staff and as certain businesses, including bars, restaurants, fitness centers, casinos and recreational facilities remain open, exposure of persons to large groups presents further serious health risks in the community; and

**WHEREAS**, the CDC and the Iowa Board of Medicine have determined that face coverings are a critical tool in the fight against COVID-19 that could reduce the spread of the virus, particularly when used universally within communities and the Iowa Board of Medicine issued a face mask advisory on August 24, 2020, noting that masks are most likely to reduce the spread of COVID-19 when they are widely used by people in public settings; and

**WHEREAS**, the Governor Proclamation requires the use of a mask or other face covering when inside an indoor space that is open to the public and provides that businesses and gatherings ensure social distancing of employees, customers and attendees, increased hygiene practices, and other public health measures to reduce the risk of transmission of COVID-19 consistent with the guidance of the Iowa Department of Public Health (“IDPH”); and

**WHEREAS**, the IDPH’s reopening guidance advises that members of the public consider the use of cloth face coverings when social distancing is not possible because wearing face coverings in public places where social distancing measures are difficult (like grocery stores and pharmacies) can help slow the spread of COVID-19; and

**WHEREAS**, the Polk County Medical Coordination Center and multiple local physicians and medical associations have endorsed the idea of face coverings in public places, including physicians experienced in epidemiology and infectious diseases and the Institute for Health Metrics and Evaluation at the University of Washington as of December 10, 2020 has projected that the US will reach nearly 539,000 deaths by April 1, 2021, but that if mask wearing in public increases to 95%, more than 66,000 lives could be saved; and

**WHEREAS**, a requirement that persons within the City of Des Moines wear face coverings and a requirement placing new size limits on gatherings is essential to reducing the risk of transmission of COVID-19, and necessary to protect the health, welfare and safety of residents and visitors and accelerate local recovery efforts; and

**WHEREAS**, a requirement that persons wear face coverings is consistent with the Governor’s Proclamation and the guidance of the IDPH and the Polk County Department of Public Health.

**NOW, THEREFORE, IN CONSIDERATION OF THE FORGOING AND OTHER VALID EMERGENT CONCERNS, I, T.M. FRANKLIN COWNIE, MAYOR OF THE CITY OF DES MOINES, PROCLAIM THE FOLLOWING:**

I determine that the state of emergency or public danger determined to exist in my Proclamation of March 15, 2020, Proclamation Amendment of March 17, 2020, Proclamation Amendment of June 5, 2020, Proclamation Amendment of July 31, and Proclamation Amendment of August 26 still exists and that the guidance referenced herein from the CDC is appropriate and instructional and that the Governor’s prohibitions and requirements are legal and binding.

- A. Face Coverings. Consistent with the authority granted me by the Iowa Code and City of Des Moines Municipal Code referenced above, I therefore direct, require and order that all persons in the City of Des Moines shall wear a face covering such as a cloth mask, surgical mask, plastic shield or similar covering that covers their nose and mouth when in a public place in all of the following circumstances unless as excepted in subsection (c) below:
- a) 1) When outside one’s residence or dwelling place and unable to stay at least six (6) feet away from other persons;
  - 2) When inside any indoor public settings or place of public accommodations as defined in City of Des Moines Municipal Code Chapter 62, including without limitation all retail stores, restaurants, bars, taverns and other accommodations;
  - 3) When in any other public settings that are not one’s residence or dwelling place with persons who do not live in the same residence or dwelling place;
  - 4) When using public transportation or private car service (including taxis, ride share, or carpooling).
- b) No organization that is a public accommodation of any sort, including without limitation, a business that is open to the public, may provide service to a customer or allow a customer to enter its premises, unless the customer is wearing a face covering as required by this Proclamation, and such organizations must post signs at entrance(s) instructing customers of their legal obligation to wear a face covering while inside pursuant to this Proclamation.
- c) The provisions of this section shall not apply to the following persons:
- 1) Persons under 2 years of age;
  - 2) Any person who has trouble breathing, is currently on oxygen therapy or on a ventilator;
  - 3) Any unconscious or incapacitated person or any person who is otherwise unable to remove the face covering without assistance;
  - 4) Any person who has been told in writing by a medical, legal, or behavioral health professional not to wear face coverings when that writing is carried on the person not using an otherwise required face covering unless such inquiry is prohibited by Federal or State law;
  - 5) Any person actively engaged in a public safety role, including but not limited to law enforcement, firefighters, or emergency medical personnel;

- 6) Any person traveling in a personal vehicle alone or with members of the same household;
- 7) Any person who is alone or in the presence of only members of the same household;
- 8) Any person exercising at moderate or high intensity (e.g. jogging or biking);
- 9) Any person seated at a food establishment when actually engaged in the process of eating or drinking;
- 10) Any person actually obtaining a service that would require temporary removal of the persons face covering (e.g. dental, orthodontic or medical services);
- 11) Any person for whom a face covering would be violative of a sincerely held religious belief or doctrine;
- 12) When Federal or State law prohibits wearing a face covering or requires the removal of the face covering.

B. Gatherings. I therefore direct that the Proclamation prohibition on indoor gatherings of 10 people or more on public property or public right-of-way shall continue in full force and effect. In addition to this prohibition on indoor gatherings, City community recreation centers shall be limited to 50% of facility capacity and reasonable measures shall be implemented to ensure social distancing of City employees and visitors, increased hygiene practices and other public health measures to reduce transmission of COVID-19 consistent with guidance issued by the IDPH. I further direct that the Proclamation prohibition on an outdoor social, community, recreational, leisure or sporting gathering or event, including, but not limited to a parade, festival, convention, or fundraiser, of more than 30 people on public property or public right-of-way that has not previously been leased or has not previously been granted exclusive use through a concession to a third party shall be in full force and effect. In the case of such previously leased or previously granted concession for exclusive use property, the prohibition shall be a percentage limitation of facility capacity approved by the City Manager. I further direct that the Proclamation requirements on an outdoor social, community, recreational, leisure or sporting gathering or event, including, but not limited to a parade, festival, convention, or fundraiser, of more than 10 and up to 30 people on public property or public right-of-way shall be in full force and effect and comply with the following requirements:

- 1) The gathering organizer or sponsor must limit the number of participants present in any outdoor setting to a number that permits the social distancing required by subsection (B)(2).
- 2) The gathering organizer or sponsor must ensure at least six feet of physical distance between each group or individual attending alone.
- 3) The gathering organizer or sponsor shall implement reasonable measures under the circumstances of each gathering to ensure social distancing of gathering participants, increased hygiene practices, use of face coverings when social distancing isn't possible and other public health measures to reduce the risk of transmission of COVID-19 consistent with guidance issued by the IDPH and, for any food service, the Iowa Department of Inspections and Appeals.
- 4) The gathering organizer or sponsor shall comply with all other relevant provisions of the Governor Proclamation.
- 5) The gathering organizer or sponsor shall comply with all other reasonable and lawful permit requirements imposed by the City Manager to reduce the risk of transmission of COVID-19.

As part of the permit application to conduct a social, community, recreational, leisure or sport gathering or event of more than 10 and up to 30 people on public property or public right-of-way, the gathering organizer or sponsor must document its willingness, ability and capacity to comply with all the above requirements. If the City Manager reasonably determines that the gathering organizer or sponsor is unwilling, unable or otherwise incapable of complying with all the above requirements, the City Manager shall not issue a permit for the gathering or event and such gathering or event shall be prohibited. I further determine and direct the Police Chief to enforce such direction to avoid any such prohibited gatherings, whether formally or informally organized.

I further strongly urge—consistent with the recommendations of the Governor and CDC—that private gatherings of 10 or more people on private property shall comply with all applicable requirements of the Governor Proclamation.

- C. Provision of Face Coverings. Given the evidence that demonstrates reduced risk of transmitting and contracting COVID-19 by use of face coverings, I hereby direct the City Manager to continue the City program using his emergency procurement authority to procure and distribute face masks to members of the public not using face masks in the situations above described, utilizing city employees, volunteers, non-profits and other concerned individuals willing to disseminate such face coverings.
- D. General. This Amendment to the previously issued and amended Proclamation of emergency and public danger is part of an ongoing response of the City of Des Moines to protect public health and safety and may be modified or superseded with more restrictive proclamations at any time as circumstances warrant and in all other respects and purposes, the prior amended Proclamation as hereby further amended continues in full force and effect.

With respect to the terms of Section (A), Section (B) and this Section (D) herein, per City of Des Moines Municipal Code Section 2-168(c), the public is advised that the violation of a Mayoral Proclamation of emergency or of any subsidiary proclamation thereto evidencing the exercise of emergency powers or of any rule or order issued pursuant thereto by the Mayor or the City Manager or of any order issued pursuant thereto by any peace officer or of any directive issued by designated emergency services personnel pursuant thereto shall constitute a violation of that Section and shall be punishable as a misdemeanor as provided by City of Des Moines Municipal Code Section 1-15.

PROCLAIMED THIS 14<sup>TH</sup> DAY OF DECEMBER, 2020 BY THE AUTHORITY VESTED IN ME BY THE  
CODE OF IOWA AND THE CITY OF DES MOINES MUNICIPAL CODE:

*T. M. Franklin Cownie*  
T. M. FRANKLIN COWNIE, MAYOR  
CITY OF DES MOINES