

1. Agenda And Packet

Documents:

[JULY 13, 2020 SPECIAL COUNCIL AGENDA.PDF](#)
[JULY_13_2020_SPECIAL_MEETING_PACKET.PDF](#)

City of Excelsior
Notice of Special Meeting
of the Excelsior City Council

NOTICE IS HEREBY GIVEN that the City Council of the City of Excelsior will hold a special meeting on July 13, 2020 at 5:00 p.m. via a telephonic and/or electronic meeting. The agenda for the meeting is attached hereto.

In accordance with the requirements of Minn. Stat. Section 13D.021, the Mayor, the city manager, and the city attorney have determined that an in-person meeting is not practical or prudent because of the "COVID-19 Health Pandemic" emergency declared under Chapter 12 of the Minnesota Statutes. Due to the measures necessary to contain and mitigate the impacts of the Pandemic Emergency, it has been determined that attendance at the regular meeting location by members of the public is not feasible and that the physical presence at the regular meeting location by at least one member of the body, chief legal counsel or chief administrative officer is not feasible. Therefore, all staff and City Council members will be participating by telephone or other electronic means.

Members of the public may attend the meeting by joining via Zoom either online or by telephone at:

Join Zoom Meeting

<https://us02web.zoom.us/j/84665402574>

Meeting ID: 846 6540 2574

Dial by your location

+1 301 715 8592 US

+1 312 626 6799 US (Chicago)

Meeting ID: 846 6540 2574

City of Excelsior
Special Council Meeting

Agenda

July 13, 2020

5:00 p.m.

(Please Note: Times Listed Are Approximate)

1. CALL TO ORDER
2. ROLL CALL
3. AGENDA APPROVAL
4. FACE COVERING POLICY
5. SLMPD UPDATE
6. ADJOURNMENT

City of Excelsior
Notice of Special Meeting
of the Excelsior City Council

NOTICE IS HEREBY GIVEN that the City Council of the City of Excelsior will hold a special meeting on July 13, 2020 at 5:00 p.m. via a telephonic and/or electronic meeting. The agenda for the meeting is attached hereto.

In accordance with the requirements of Minn. Stat. Section 13D.021, the Mayor, the city manager, and the city attorney have determined that an in-person meeting is not practical or prudent because of the "COVID-19 Health Pandemic" emergency declared under Chapter 12 of the Minnesota Statutes. Due to the measures necessary to contain and mitigate the impacts of the Pandemic Emergency, it has been determined that attendance at the regular meeting location by members of the public is not feasible and that the physical presence at the regular meeting location by at least one member of the body, chief legal counsel or chief administrative officer is not feasible. Therefore, all staff and City Council members will be participating by telephone or other electronic means.

Members of the public may attend the meeting by joining via Zoom either online or by telephone at:

Join Zoom Meeting

<https://us02web.zoom.us/j/84665402574>

Meeting ID: 846 6540 2574

Dial by your location

+1 301 715 8592 US

+1 312 626 6799 US (Chicago)

Meeting ID: 846 6540 2574

City of Excelsior
Special Council Meeting

Agenda

July 13, 2020

5:00 p.m.

(Please Note: Times Listed Are Approximate)

1. CALL TO ORDER
2. ROLL CALL
3. AGENDA APPROVAL
4. FACE COVERING POLICY
5. SLMPD UPDATE
6. ADJOURNMENT

STAUNTONLAW MEMORANDUM

5277 lochloy drive
edina, minnesota 55436
(952) 836.1020

To: Mayor and City Council

FROM: Kevin P. Staunton
City Attorney

RE: COVID-19 Local Face Covering Resolution and Ordinance

DATE: July 11, 2020

As a follow up to your discussion regarding face coverings at your July 6 meeting, attached are drafts of a resolution and ordinance for Monday's meeting. As drafted, you could adopt both the resolution and ordinance at your meeting on Monday. The resolution would go into effect immediately and stay in place until the ordinance (which is drafted as an emergency ordinance) goes into effect on July 23. You also have the option of adopting one or the other. If you only adopt the resolution, there is some question about the ability to impose criminal penalties for non-compliance (and, accordingly, it does not include enforcement language). If you adopt only the ordinance, it would not be effective until July 23 and would take longer to repeal when you want to lift the requirements in the future. The resolution is drafted for the council to approve because (under Chapter 14 of our City Code) the Mayor is only authorized to issue a declaration of a local emergency (which was done in late March). Subsequent regulations (like this one) can only be issued by the full council.

The major substantive features of the documents include:

- The face covering requirements apply to indoor spaces in restaurants, "spaces of public accommodation" (which are broadly defined to include any "business, refreshment, entertainment, or recreation facility, or an institution of any kind, whether licensed or not, whose goods, services, facilities, privileges, advantages, or accommodations are extended, offered, sold, or otherwise made available to the public"), entertainment venues, and common areas in multi-family dwellings and office buildings.
- The regulations carve out a number of exemptions (see section 4 for the full list) designed to cover facilities or businesses already covered by the Governor's orders and industry guidance as well as practical exemptions for health, age, etc. We have to determine the age below which we will not require masks (the CDC does not require them below 2 years of age, Edina is 5 years old, and Mankato has chosen 12 years of age).
- The regulations require owners or managers of properties subject to the order to post notice of it at their entrances and recommends that they provide masks to customers at no or a nominal charge.

- The resolution commences on July 14 and terminates the earlier of (a) a mask order from the Governor, (b) the end of the statewide peacetime emergency, (c) rescission by the council, (d) the effective date of any ordinance superseding the resolution; or (e) December 31, 2020. The ordinance has the same sunset provisions with the exception of the superseding ordinance provision.

The resolution does not have any enforcement language. The emergency ordinance includes a penalty section with the following language based on the ordinance recently adopted by the city of Mankato:

Voluntary compliance will be requested with a warning being issued. Repeat violations shall be evidence of a refusal to comply with the terms of the ordinance and may be cited as a misdemeanor offense. The city may request that the district court designate this violation as a payable offense (in the amount of \$100 plus applicable court fees) approved by the Minnesota Judicial Council. Recipients of citations under this section may elect not to pay the fine and pursue a court appearance process with a penalty determined by a Hennepin County District Court Judge.

RECOMMENDED ACTION: Discuss the alternatives and, if you choose to impose a regulation of some kind, adopt either the resolution, the ordinance, or both.

cc: Kristi Luger

CITY OF EXCELSIOR
RESOLUTION NO. 2020-__

**RESOLUTION ENACTED UNDER AUTHORITY OF
MINNESOTA STATUTES §§ 12.29 AND 12.37 AND EXCELSIOR CITY CODE
CH. 14 TO REQUIRE THE USE OF FACE COVERINGS**

WHEREAS, the City of Excelsior has declared a local emergency (“Excelsior Emergency”) pursuant to Minn. Stat. §§ 12.29 and 12.37 to respond to the global COVID-19 pandemic; and

WHEREAS, the Excelsior Emergency has been put in place until it is lifted by the city council or until such time as the Peacetime Emergency declared for the State of Minnesota is lifted or expires, whichever is sooner; and

WHEREAS, the public health response to the COVID-19 pandemic has been focused on reducing the spread of the virus while simultaneously making all reasonable efforts to permit business and social activities to take place; and

WHEREAS, since issuing Executive Order 20-48, Governor Waltz has strongly encouraged Minnesotans "to wear a manufactured or homemade cloth face covering when they leave their homes and [are] traveling to any public setting where social distancing measures are difficult to maintain (e.g., grocery stores and pharmacies) and to follow face covering guidelines issued by the Minnesota Department of Health (MDH) and the Centers for Disease Control and Prevention (CDC). Such face masks and coverings are for source control (to help limit the person wearing the covering from infecting others)"; and

WHEREAS, health officials are increasingly urging non-medical workers to wear non-medical grade cloth face coverings to help curb the spread of COVID-19, by preventing the transmission of respiratory droplets that contain the virus; and

WHEREAS, public health experts have determined that it is possible to transmit COVID-19 even before a person shows symptoms; and

WHEREAS, public health experts have determined that the use of face coverings may reduce the risk of transmission by an infected person as a force multiplier for physical distancing, hand washing, and other prevention measures, understanding that face coverings are not recommended as a replacement for these activities; and

WHEREAS, on June 28, 2020, the CDC issued the following guidance on face covering use:

1. CDC recommends that people wear cloth face coverings in public settings and when around people who do not live in your household, especially when other social distancing measures are difficult to maintain.
2. Cloth face coverings may help prevent people who have COVID-19 from spreading the virus to others.
3. Cloth face coverings are most likely to reduce the spread of COVID-19 when they are widely used by people in public settings.
4. Cloth face coverings should NOT be worn by children under the age of 2 or anyone who has trouble breathing, is unconscious, incapacitated, or otherwise unable to remove the mask without assistance.

NOW, THEREFORE, PURSUANT TO THE AUTHORITY GRANTED TO IT BY MINN. STAT. § 12.29 AND EXCELSIOR CITY CODE § 14-6, BE IT RESOLVED by the City Council of the City of Excelsior, Minnesota, as follows:

1. It is hereby ordered that beginning July 14, 2020 and continuing until this order is terminated pursuant to the provisions of section 11 below, all individuals in the City of Excelsior shall wear a face covering in indoor areas accessible to the public, unless exempted pursuant to section 4 below. For the purposes of this order, “indoor areas accessible to the public” shall include:
 - A. **Restaurants.** Restaurants in Excelsior shall include provisions in their COVID-19 Preparedness Plan that all customers wear a face covering when not seated at their table.
 - B. **Spaces of Public Accommodation.** Owners and managers of spaces of public accommodation shall include in their COVID-19 Preparedness Plan requirements that all employees wear a face covering when the individual is within any area open to the public or within six feet of another person. Customers are required to wear a face covering before entering the spaces of public accommodation and must wear the face covering until exiting.
 - C. **Entertainment Venues.** Users are required to wear a face covering when the user is within six feet of another person. When the user is seated and not within six feet of another person, they can remove the face covering, but must wear the face covering when walking to or from their seat and while standing in or walking through public areas such as lobbies and restrooms.
 - D. **Common Spaces in Multi-Family Residential and Multi-Tenant Office Buildings.** Residents of multi-family housing buildings, and their guests; and tenants, employees and their guests in multi-tenant office buildings shall wear a face covering when in common spaces such as hallways, corridors, lobbies, restrooms, mail rooms, elevators, trash and recycling rooms, fitness rooms, recreation rooms, laundry rooms and other space owned and used in common by the residents, employees and tenants of the building.
2. For purposes of this Order, "face covering" shall mean a manufactured or homemade cloth, paper or plastic covering that fully covers an individual's nose and mouth, secured to the head with ties or straps or simply wrapped around the lower face. The terms "mask" and "face covering" are synonymous.
3. For purposes of this Order, a “space of public accommodation” means a business, refreshment, entertainment, or recreation facility, or an institution of any kind, whether licensed or not, whose goods, services, facilities, privileges, advantages, or accommodations are extended, offered, sold, or otherwise made available to the public. Examples include retail stores, City of Excelsior government buildings, and service establishments. This definition includes establishments and facilities that offer food and beverage not for on-premises consumption, including grocery stores, markets, convenience stores, pharmacies, drug stores, and food pantries.
4. Exemptions. This Order does not apply to:
 - A. Facilities operated by the County, State or Federal Government.
 - B. Personal Care Services/Salons that already are subject to State face covering requirements.
 - C. Medical facilities that already have face covering requirements.
 - D. Children _ years of age or younger.
 - E. Individuals actively eating or drinking.

- F. Individuals temporarily removing the face covering for identification purposes.
 - G. Individuals unable to wear a face covering due to medical, disability, or developmental reasons.
 - H. Individuals speaking to an audience, whether in person or through broadcast, as long as the speaker remains six feet or more away from other individuals.
 - I. Individuals speaking to someone who is deaf or hard of hearing and requires the mouth to be visible to communicate.
 - J. Participants in youth sports, as defined by the City of Excelsior, are exempt from this Order but subject to all requirements under the State's Executive Orders.
 - K. Indoor athletic facilities. Indoor athletic facilities shall follow CDC and MDH guidelines. Patrons are not required to wear face coverings or masks while actively participating in permitted athletic activities but are encouraged to wear face coverings when not actively training.
 - L. Places of worship.
 - M. Public and private school facilities.
5. All employers of businesses that are spaces of public accommodation, as defined by this order, shall require their employees to wear a face covering whenever such employees have face-to-face contact with the public, unless other physical barriers are in place or at least six feet of separation is maintained according to CDC guidelines.
 6. The requirement in this order that face-coverings be worn in certain circumstances is intended to add to (and not be a substitute for) other practices (such as hand washing, staying home when sick, and maintaining appropriate physical distancing of at least six feet) as recommended by public health officials to minimize the spread of COVID-19.
 7. It is recommended that any individual cover their nose and mouth with a mask or a cloth face covering when physical distancing standards of at least six feet of separation cannot be maintained among all individuals in accordance with CDC guidelines when in outdoor spaces.
 8. Owners or managers of property subject to this order shall post written notice of this order at all points used by the public to access the property.
 9. Businesses and organizations are encouraged to provide masks for customers at no or nominal cost.
 10. To the extent anything in this order is inconsistent with the Emergency Executive Order 20-74 of Minnesota Gov. Tim Walz or subsequent Executive Orders issued by Governor Walz, the language of Emergency Executive Order 20-74 or such subsequently issued order shall take precedence.
 11. This order shall be effective commencing at 12:01 am on July 14, 2020, and continuing until the sooner of:
 - A. The issuance of an order by Governor Walz requiring face coverings in Excelsior.
 - B. An end to the State's Peacetime Emergency Declaration.
 - C. A Resolution of the City Council rescinding the Order.
 - D. The effective date of any ordinance superseding this Order.
 - E. December 31, 2020.

Adopted by the Council of the City of Excelsior this 13th day of July, 2020.

Todd Carlson, Mayor

ATTEST:

Lynette R. Peterson, City Clerk

Kristi Luger, City Manager

City of Excelsior
Hennepin County, Minnesota

Ordinance No. _____

An Emergency Ordinance to Adopt Face Covering Requirements
During the COVID-19 Pandemic Local Emergency

THE CITY COUNCIL OF EXCELSIOR, MINNESOTA, HEREBY ORDAINS:

SECTION ONE: Preamble – Definition and Declaration of Emergency. In March of 2020, Governor Tim Walz declared a Peacetime Emergency in the State of Minnesota to address the impacts of the global COVID-19 Pandemic. Shortly thereafter, the City of Excelsior has declared a local emergency (“Excelsior Emergency”) pursuant to Minn. Stat. §§ 12.29 and 12.37. The Excelsior Emergency was put in place until it is lifted by the city council or until such time as the Peacetime Emergency declared for the State of Minnesota is lifted or expires, whichever is sooner. Since these initial orders, a series of state and local orders have been issued continuing the Peacetime Emergency and the Excelsior Emergency.

The public health response to the COVID-19 pandemic pursuant to the Peacetime Emergency and the Excelsior Emergency has been focused on reducing the spread of the virus while simultaneously making all reasonable efforts to permit business and social activities to take place. Since issuing Executive Order No. 20-48, Governor Waltz has strongly encouraged Minnesotans "to wear a manufactured or homemade cloth face covering when they leave their homes and [are] traveling to any public setting where social distancing measures are difficult to maintain (e.g., grocery stores and pharmacies) and to follow face covering guidelines issued by the Minnesota Department of Health (MDH) and the Centers for Disease Control and Prevention (CDC). Such face masks and coverings are for source control (to help limit the person wearing the covering from infecting others). Public health officials are increasingly urging non-medical workers to wear non-medical grade cloth face coverings to help curb the spread of COVID-19, by preventing the transmission of respiratory droplets that contain the virus.

Public health experts have determined that it is possible to transmit COVID-19 even before a person shows symptoms and that the use of face coverings may reduce the risk of transmission by an infected person as a force multiplier for physical distancing, hand washing, and other prevention measures, understanding that face coverings are not recommended as a replacement for these activities. On June 28, 2020, the CDC issued the following guidance on face covering use:

1. CDC recommends that people wear cloth face coverings in public settings and when around people who do not live in your household, especially when other social distancing measures are difficult to maintain.
2. Cloth face coverings may help prevent people who have COVID-19 from spreading the virus to others.
3. Cloth face coverings are most likely to reduce the spread of COVID-19 when they are widely used by people in public settings.

4. Cloth face coverings should NOT be worn by children under the age of 2 or anyone who has trouble breathing, is unconscious, incapacitated, or otherwise unable to remove the mask without assistance.

The city council finds that it is necessary under the circumstances to adopt requirements for the use of face coverings in certain indoor locations in the city. On the date that it has adopted this ordinance, the Excelsior City Council issued an emergency order pursuant to its authority under Chapter 14 of the Excelsior City Code to require the use of face coverings in various indoor facilities in the City pending the effective date of this ordinance. That order and this ordinance are necessary to protect the public health and welfare during the COVID-19 pandemic.

SECTION TWO: Requirements.

1. All individuals in the City of Excelsior shall wear a face covering in indoor areas accessible to the public, unless exempted pursuant to paragraph 4 below. For the purposes of this ordinance, “indoor areas accessible to the public” shall include:
 - A. **Restaurants.** Restaurants in Excelsior shall include provisions in their COVID-19 Preparedness Plan that all customers wear a face covering when not seated at their table.
 - B. **Spaces of Public Accommodation.** Owners and managers of spaces of public accommodation shall include in their COVID-19 Preparedness Plan requirements that all employees wear a face covering when the individual is within any area open to the public or within six feet of another person. Customers are required to wear a face covering before entering the spaces of public accommodation and must wear the face covering until exiting.
 - C. **Entertainment Venues.** Users are required to wear a face covering when the user is within six feet of another person. When the user is seated and not within six feet of another person, they can remove the face covering, but must wear the face covering when walking to or from their seat and while standing in or walking through public areas such as lobbies and restrooms.
 - D. **Common Spaces in Multi-Family Residential and Multi-Tenant Office Buildings.** Residents of multi-family housing buildings, and their guests; and tenants, employees and their guests in multi-tenant office buildings shall wear a face covering when in common spaces such as hallways, corridors, lobbies, restrooms, mail rooms, elevators, trash and recycling rooms, fitness rooms, recreation rooms, laundry rooms and other space owned and used in common by the residents, employees and tenants of the building.
2. For purposes of this Ordinance, "face covering" shall mean a manufactured or homemade cloth, paper or plastic covering that fully covers an individual's nose and mouth, secured to the head with ties or straps or simply wrapped around the lower face. The terms "mask" and "face covering" are synonymous.
3. For purposes of this Ordinance, a “space of public accommodation” means a business, refreshment, entertainment, or recreation facility, or an institution of any kind, whether licensed or not, whose goods, services, facilities, privileges, advantages, or accommodations are extended, offered, sold, or otherwise made available to the public. Examples include retail stores, City of Excelsior government buildings, and service establishments. This definition includes establishments and facilities that offer food and

beverage not for on-premises consumption, including grocery stores, markets, convenience stores, pharmacies, drug stores, and food pantries.

4. Exemptions. This Ordinance does not apply to:
 - A. Facilities operated by the County, State or Federal Government.
 - B. Personal Care Services/Salons that already are subject to State face covering requirements.
 - C. Medical facilities that already have face covering requirements.
 - D. Children _ years of age or younger.
 - E. Individuals actively eating or drinking.
 - F. Individuals temporarily removing the face covering for identification purposes.
 - G. Individuals unable to wear a face covering due to medical, disability, or developmental reasons.
 - H. Individuals speaking to an audience, whether in person or through broadcast, as long as the speaker remains six feet or more away from other individuals.
 - I. Individuals speaking to someone who is deaf or hard of hearing and requires the mouth to be visible to communicate.
 - J. Participants in youth sports, as defined by the City of Excelsior, are exempt from this Ordinance but subject to all requirements under the State's Executive Ordinances.
 - K. Indoor athletic facilities. Indoor athletic facilities shall follow CDC and MDH guidelines. Patrons are not required to wear face coverings or masks while actively participating in permitted athletic activities but are encouraged to wear face coverings when not actively training.
 - L. Places of worship.
 - M. Public and private school facilities.
5. All employers of businesses that are spaces of public accommodation, as defined by this ordinance, shall require their employees to wear a face covering whenever such employees have face-to-face contact with the public, unless other physical barriers are in place or at least six feet of separation is maintained according to CDC guidelines.
6. The requirement in this ordinance that face-coverings be worn in certain circumstances is intended to add to (and not be a substitute for) other practices (such as hand washing, staying home when sick, and maintaining appropriate physical distancing of at least six feet) as recommended by public health officials to minimize the spread of COVID-19.
7. It is recommended that any individual cover their nose and mouth with a mask or a cloth face covering when physical distancing standards of at least six feet of separation cannot be maintained among all individuals in accordance with CDC guidelines when in outdoor spaces.
8. Owners or managers of property subject to this ordinance shall post written notice of this ordinance at all points used by the public to access the property.
9. Businesses and organizations are encouraged to provide masks for customers at no or nominal cost.
10. To the extent anything in this ordinance is inconsistent with the Emergency Executive Order 20-74 of Minnesota Gov. Tim Walz or subsequent Executive Orders issued by

Governor Walz, the language of Emergency Executive Order 20-74 or such subsequently issued order shall take precedence.

11. This ordinance shall supersede Resolution No. 2020-__ requiring the use of face coverings and continue in effect until the sooner of:
- A. The issuance of an order by Governor Walz requiring face coverings in Excelsior.
 - B. An end to the State's Peacetime Emergency Declaration.
 - C. Repeal by subsequent action of the city council.
 - D. December 31, 2020.

SECTION THREE: Enforcement. Voluntary compliance will be requested with a warning being issued. Repeat violations shall be evidence of a refusal to comply with the terms of the ordinance and may be cited as a misdemeanor offense. The city may request that the district court designate this violation as a payable offense (in the amount of \$100 plus applicable court fees) approved by the Minnesota Judicial Council. Recipients of citations under this section may elect not to pay the fine and pursue a court appearance process with a penalty determined by a Hennepin County District Court Judge.

SECTION FOUR: Effective Date. This ordinance shall be effective upon publication.

Adopted by the City Council of the City of Excelsior, Minnesota, this 13th day of July, 2020.

Todd R. Carlson, Mayor

ATTEST:

Lynette R. Peterson, City Clerk

Kristi Luger, City Manager

First Reading and Adoption:	July 13, 2020
Publication of Ordinance:	July 23, 2020
Effective Date:	July 23, 2020