

MAYSVILLE BOARD OF COMMISSIONERS
Monday, 29 November 2021; 10:00 a.m.
SPECIAL MEETING
Maysville Municipal Building

The Board of Commissioners of the City of Maysville, Kentucky met in regular session on Monday, Nov. 29, 2021 at 10:00 a.m. at the Maysville Municipal Building. Present were Commissioner Ann Brammer, Commissioner David Cartmell, Commissioner Andrew Wood, Commissioner Victor McKay, and Mayor Debra L. Cotterill. Also present were City Manager Matt Wallingford, City Clerk Lisa R. Dunbar, City Attorney Kelly Caudill, and Police Chief Jared Muse.

MUNICIPAL ORDER AUTHORIZING OSHA VACCINE/TESTING POLICY

The following Municipal Order was presented to the Board of Commissioners:

COMMONWEALTH OF KENTUCKY
CITY OF MAYSVILLE
MUNICIPAL ORDER No. 21-06

MUNICIPAL ORDER IMPLEMENTING THE OCCUPATIONAL SAFETY AND HEALTH
ADMINISTRATION (OSHA) EMERGENCY TEMPORARY STANDARD REGARDING VACCINATION,
TESTING AND FACE COVERING POLICY

WHEREAS, OSHA implemented an Emergency Temporary Standard requiring employers to adopt a policy regarding vaccination, testing and face coverings on November 5, 2021 within 29 CFR 1910.501;

WHEREAS, Kentucky, as a State Plan under OSHA has adopted the Emergency Temporary Standard, on _____, 2021;

WHEREAS, the City of Maysville is required under the Emergency Temporary Standard to adopt a policy as of December 6, 2021;

WHEREAS, vaccination is a vital tool to reduce the presence and severity of COVID-19 cases in the workplace, in communities, and in the nation as a whole. The City of Maysville encourages all employees to receive a COVID-19 vaccination to protect themselves and other employees.

WHEREAS, an employee who chooses not to be vaccinated, must comply with the City of Maysville policy on testing and face coverings.

NOW, THEREFORE, BE IT ORDERED AS FOLLOWS

1. The City of Maysville is adopting the City of Maysville Vaccination, Testing and Face Covering Policy (Policy) in Appendix A, which is attached to this Municipal Order.
2. The Policy applies to all employees of the City of Maysville, with limited exceptions as listed in the Policy in Appendix A.
3. All other employee manual rules shall remain in force.
4. This order will terminate within six months from November 5, 2021, or upon notification of OSHA that the Emergency Temporary Standard is no longer in effect.

Motion by Commissioner McKay, second by Commissioner Brammer to adopt Municipal Order No. 21-06 for discussion.

City Manager Wallingford explained that the policy was required of all employers of more than 100 employees by the Federal Occupational Safety and Health Administration. However, a stay had been put on the enactment of the policy by the Sixth U.S. Circuit Court of Appeals. The policy would require workers who are not vaccinated for COVID to wear masks beginning Dec. 6, 2021 and be tested on a weekly basis beginning Jan. 4, 2022. The City already had a mask requirement for unvaccinated workers.

Mr. Wallingford said the maximum violation of OSHA rules was \$136,532 with a minimum penalty of \$9,753. However, under the Build Back Better reconciliation bill penalties of OSHA regulation would be increase 10 fold. Therefore, repeated and willful violations would be as much as \$1,365,320 or a minimum of \$97,530. A single serious violation could be \$136,532 per for each day the violation occurs.

Commissioner McKay asked if the City would enforce the policy even though it was on hold.

City Attorney Caudill said that the City would have to enforce it if Commission adopted it. However, it could be rescinded if the stay was not lifted prior to the deadlines. He said the 5th Circuit Court had accelerated motions so a decision might be handed down fairly quickly.

Commissioner Wood said he was concerned that the City might be liable if there were health problems associated with the vaccine in the future.

Mr. Caudill said that he didn't think the City could be held liable if it is responding to a federal mandate.

Commissioners expressed concern over the costs of weekly testing.

Mr. Caudill said that under KRS, employers cannot require employees to pay the cost of mandatory health testing.

The Board of Commissioners agreed that they would prefer to have a special meeting in the future to pass the Municipal Order if the Sixth Circuit Court lifts the stay.

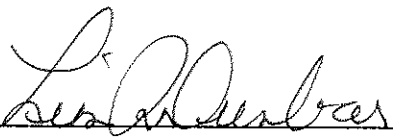
Commissioners McKay and Brammer withdrew their motions.

ADJOURNMENT

Motion by Commissioner Wood, second by Commissioner Brammer to adjourn at 10:30 a.m. Upon call of roll, voting was as follows: Voting aye: Commissioner Brammer, Commissioner Cartmell, Commissioner Wood, Commissioner McKay and Mayor Cotterill, Motion carried.



MAYOR



CITY CLERK