



MEMORANDUM

DATE: May 20, 2021
TO: CBJ Assembly
FROM: Robert Palmer, Municipal Attorney
SUBJECT: Ratifying the CBJ COVID-19 Mitigation Strategies of EO 2021-11(am)

On April 26, 2021, the Assembly enacted Emergency Ordinance 2021-11(am), which reestablished the COVID-19 Mitigation Strategies and provided for a penalty. That ordinance is set to expire on July 31, 2021, and requires the Manager to keep it consistent with Centers for Disease Control and Prevention (CDC) guidance and “present the revisions to Exhibit A at regular or special Assembly meetings for ratification.”

The CDC has revised its guidance for fully vaccinated people. According to the CDC, fully vaccinated people no longer need to wear a mask indoors except on public transit, in airports/airplanes, or in locations/facilities that require masks. Consistent with Emergency Ordinance 2021-11, the Manager has updated Exhibit A and it is ready for Assembly ratification.

While the Assembly has been able to use the emergency ordinance process during the past year, I am struggling to articulate the facts to justify ratification by emergency ordinance. The CBJ Charter defines an emergency as “a sudden, unforeseen occurrence or condition which results in a relatively permanent insufficiency of service or facilities substantial enough to create social disturbance or distress or to endanger the public. Emergency does not mean mere expediency, convenience, or best interest.” Charter 15.14(e).

Unlike in the past when we did not know how to minimize the spread of COVID-19, when there was scarcity of masks and other protective equipment, when our definitive care hospitals (Anchorage and Seattle) were near capacity, when COVID-19 case rates around the state and country were exponentially growing, when Juneau’s overall risk level was more than minimal, or when we did not have readily available vaccine for the bulk of the population, people of the City and Borough of Juneau have made great strides to protect each other such that I am not aware of a sudden, unforeseen occurrence that results in a relatively permanent insufficiency of service or facilities. Furthermore, the Assembly has sufficient time to ratify via a regular ordinance.

However, I know that COVID-19 circumstances can change quickly, which could easily justify an emergency ordinance. I recognize children between the age of 12 and 16 were just given the opportunity to get their first vaccine shot, and children under the age of 12 are not eligible. Additionally, while 60% of our population is fully vaccinated, that leaves approximately 12,000 people that are either unvaccinated or not fully vaccinated. As our neighbors in Ketchikan and Fairbanks have recently endured, COVID-19 outbreaks can arise quickly and can cause a relatively permanent insufficiency of services or facilities. If such a COVID-19 outbreak occurs here, the Assembly would still have the emergency ordinance authority to impose necessary measures to protect the public health.

For now, I see two prominent options to ratify the recent CDC changes for vaccinated people: continue the “mandatory” approach or transition to a “recommendation” approach.

“Mandatory” Option (Ordinance 2021-22): Use the regular ordinance process (introduction 5/24, public hearing 6/14, and effective 7/15) to ratify the COVID-19 Mitigation Measures (Exhibit A). This option would keep the revised mitigation measures in place as mandatory for as long as the Assembly desires or just until July 31, which is the current expiration date of Emergency Ordinance 2021-11. Except for allowing fully vaccinated people to forgo the mask in most places, nothing else changes in Exhibit A (i.e. non-fully vaccinated people would still be required to wear a mask indoors). As described above the, CDC order would still require masks to be work on public transportation (i.e. Capital Transit and airplanes), masks would be required in the Juneau Airport, and businesses/facilities would be free to require masks.

“Recommendation” Option (Resolution 2953): Terminate the Emergency Ordinance 2021-11 and re-establish the COVID-19 Mitigation Measures (Exhibit A) as recommendations. As described above, the CDC order would still require masks to be work on public transportation (i.e. Capital Transit and airplanes), masks would be required in the Juneau Airport, and businesses/facilities would be free to require masks.

Both of these options are presented on May 24, 2021, for the Assembly to decide which is the most appropriate:

- If an Assemblymember wants to continue the “mandatory” approach, then an Assemblymember would move to introduce Ordinance 2021-22 and set it for public hearing at the next regular Assembly meeting. If that motion passes, then the Assembly should move to table Resolution 2953 because it would be moot.
- If an Assemblymember wants to transition to a “recommendation” approach, then an Assemblymember would move to adopt Resolution 2953. If that motion passes, then the Assembly should move to table (aka reject from introduction) Ordinance 2021-22 because it would be moot.