

Small Business Notes

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New SEC Report: Debt Capital Far Outweighs Equity Capital as a Financing Source

At the end of December the SEC’s Office of the Advocate for Small Business Capital Formation released its 2021 report on small business capital raising in the period July 1, 2020 through June 30, 2021.

- Initial public offerings raised \$317 billion with a substantial increase over 2019-2020 from technology companies (\$57 billion up from \$7 billion). Venture capital backed companies comprised the largest piece of exchange listed initial public offerings.
- Registered offerings such as follow-on and secondary public offerings raised \$1.4 trillion.
- Exempt offerings under Regulation D [Rule 504 and Rule 506(c)] raised in excess of \$1.9 trillion.
- Federal crowdfunding activity raised \$174 million. The report noted that 40% of successful
- Crowdfunding offerings had women or underrepresented minority founders.
- Regulation A offerings (used mostly by real estate companies) raised \$1.7 billion.

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Minneapolis and Saint Paul Issue Mask Mandates

Although the Minnesota Department of Health continues to only recommend masking, the cities of Minneapolis and Saint Paul have issued their own mask mandates effective January 6 but with different coverages and effects.

The Minneapolis mandate (Emergency Regulation No.2022-01) requires that any individual over the age of two who is medically able to tolerate a mask shall cover their nose and mouth with a medical grade mask or cloth face covering...when in indoor spaces of public accommodation, regardless of the individual's vaccination status, except for purposes of eating or drinking.

The Emergency Regulation defines "public accommodation" broadly as "a business, or an educational, 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."

The Emergency Regulation specifically requires employers a "require their employees, regardless of vaccination status, to wear a medical-grade or cloth face covering whenever such employees have face-to-face contact with the public."

Saint Paul's Mandate provides for three categories of coverage:

- Individuals at city-controlled property (to include park facilities, libraries and city offices and workplaces) must wear a face covering indoors at all times when social distancing of at least 6 feet is not maintained;
- Businesses licensed by the city must require all individuals to wear a face covering indoors when social distancing of at least 6 feet is not maintained, except for temporary removal of the face covering when eating or drinking.
- All businesses are strongly encouraged to continue to require that all individuals wear a face covering indoors when social distancing of at least 6 feet is not maintained.

Violations of the Minneapolis order can result in issuance of a warning letter, an administrative citation for city-licensed businesses, and/or misdemeanor prosecution.

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Violations of the Saint Paul order can result in adverse licensing actions (for city licensed businesses) and civil and administrative penalties for all businesses under Chapter 310 of the Saint Paul Legislative Code.

On January 12, both cities also issued requirements for persons to show proof of vaccination or a negative antigen test conducted within three days in places of public accommodation (defined as above) where food or drink is sold in order to be admitted to the premises. In Minneapolis the order explicitly names as covered locations indoor restaurant spaces or coffee shops; cafes within larger spaces (e.g., museum cafes); bars; sports venues serving food or drink; movie theatres; bowling alleys; conventions if food is served; catering halls; food court areas exclusive to specific establishments.

The Minneapolis order excludes hospitals; childcare settings; take-out food providers; places where food is consumed as part of a religious practice; places selling packaged food for off-site consumption; any location that is outdoors having two or more sides fully open to the outside.

The Saint Paul order will apply to restaurants and bars; coffee shops; cafes; sports venues (such as the Excel Center) bowling alleys; convention center; catering halls. It exempts schools, hospitals, congregate care facilities; public areas-such as skyways not connected to a restaurant or bar.

“Coping” Not “Prospering” May be the Status of Small Businesses Into 2022

As the nation approaches the beginning of the third year of the COVID-19 pandemic it appears that challenges faced over the past two years will persist for small businesses.

- COVID will continue its short and long term affects on both the broader economy and individual businesses. Prevention and mitigation strategies like vaccination and masking will continue to be complicated and difficult in terms of understanding and implementing government policy. For example, the U.S. Supreme Court’s decision on January 13, 2022 in *NFIB v. OSHA* stayed the implementation of the federal government’s vaccination mandate for non-healthcare employers; while the cities of Minneapolis and St. Paul early in January initiated mask mandates for workers and patrons of bars, restaurants, and other places of public accommodation. Other municipalities did not. How much of a competitive disadvantage this is will be for Twin Cities businesses remains to be seen.
- Supply chain issues continue, often tied to employment issues and the inability to get enough workers to handle the demands of production and distribution. Small businesses may find themselves locked-out of the supply chain by larger, cash rich business that can put in place long term, up-front contracts with suppliers.

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- Market failures, supply chain and distribution chain disruptions, and changes in consumer preferences will continue to affect the bottom line. Many small businesses were saved from bankruptcy only by funds from forgivable loan programs of the federal government like the Payroll Protection Program, or by grants from Minnesota's Small Business Relief Grants. These served as Band-Aids in the crisis but were never intended to be supporters of long term, market-driven profitability and growth.
- Inflation and higher wage demands driven both by changes in minimum wages and labor shortages will continue to exert upward pressure on prices businesses must pay to their suppliers. But many small businesses are in price taker markets where they have a very narrow band of flexibility to either raise or lower prices: raise prices too much and the market goes away; lower prices too much and the business itself goes away.

In short, old problems will persist requiring new thinking and flexibility of the part of businesses.

2022 Edition of *A Guide to Starting A Business In Minnesota* Published

DEED's Small Business Assistance Office has published the 40th edition (2022) of its comprehensive [*A Guide to Starting A Business In Minnesota*](#).

COVID pandemic caused supply chain delays have caused a delay in DEED's move to its new location in the Great Northern Building in Saint Paul. That delay has left the Small Business Assistance Office without adequate space for publication storage and distribution. The *Guide* will, therefore, be available only in digital format on the DEED [website](#) until at least end of the first quarter of 2022.

The digital version has the same content, format, and pagination as the hard copy.

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Past issues of Small Business Notes are available on the Department of Employment and Economic Development website at [Small Business Notes](#)

Small Business Notes is published to offer timely, accurate, and useful information on topics of concern to small businesses in Minnesota. It is for general information purposes only. It is not legal advice and should not be relied on for resolution or evaluation of legal issues or questions. Readers are advised to consult with their private legal advisors for specific legal advice on any legal issues they may have.

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