

MARSHALL COUNTY ORDINANCE NO. 2020-21

COVID-19 FACE MASK REQUIREMENTS FOR LOCAL WORKPLACE SAFETY AND ENFORCEMENT

WHEREAS, the Marshall County Board of Commissioners issued a Public Health Disaster Emergency Declaration, Marshall County Resolution 2020-02 on March 20, 2020, declaring a public health emergency in the county and invoking and declaring those portions of Indiana Code applicable to the conditions causing the issuance of the declaration to be in full force and effect in the county for the exercise of the necessary emergency authority for the protection of lives and property of the people of Marshall County; and

WHEREAS, the Marshall County Board of Commissioners extended the original Public Health Disaster Emergency Declaration through May 21, 2020 by subsequent extension resolutions but allowed the declaration to lapse after said date when it appeared there was no longer a public health disaster emergency; and

WHEREAS, the Marshall County Board of Commissioners issued a Public Health Disaster Emergency Declaration, Marshall County Resolution 2020-32 on October 20, 2020 as a result of the resurgence of the Coronavirus disease, COVID-19 in Marshall County which Public Health Disaster Emergency Declaration has been extended by Marshall County Resolution 2020-33; Marshall County Resolution 2020-34; Marshall County Resolution 2020-35; and Marshall County Resolution 2020-36; and

WHEREAS, as of the date of this resolution, the resurgence of the COVID-19 outbreak has caused an increase in positive COVID-19 cases and COVID-19 related deaths in Marshall County so as to strain the entire healthcare structure in the county and in the State of Indiana and to further put at risk all members of the public and all Marshall County citizens; and

WHEREAS, the Governor of Indiana issued Executive Order 20-48 on November 13, 2020 which Executive Order requires all Hoosiers and individuals within the State of Indiana to exercise caution at all times and adhere to CDC guidance and the measures outlined in his Executive Order for the safety and health of every person within the State of Indiana and for the safety of those around them. The Executive Order further requires, among other things, all Hoosiers and individuals in the State of Indiana to wear a face covering over the nose and mouth when: (i) inside a business, a public building, or other indoor place open to the public. This does not extend, however, to private

offices, private workspaces or meetings in which six (6) feet of social distancing can be achieved and maintained between individuals not in the same household; (ii) in an outdoor public space wherever it is not feasible to maintain six (6) feet of social distancing from another person not in the same household; or (iii) using public transportation or while in a taxi, private car service, or ride sharing vehicle; unless exempted for specific individuals which exemptions are provided for in the Governor's Executive Order.

The Governor's Executive Order also included enforcement provisions as follows:

a. Workplace Safety:

Directing the IOSHA to take all available administrative and enforcement actions against businesses or entities failing to comply with workplace safety conditions.

b. Health and Law Enforcement Officials:

The ISDH, the Indiana Department of Homeland Security, Alcohol and Tobacco Commission, local boards of health, and other state and local officials or law enforcement officers may take all available administrative and enforcement actions against businesses or entities failing to comply with restrictions and other public health requirements for businesses as set forth in this Executive Order. It is recommended the following incremental steps be taken:

- i. Issuing a verbal order to cease the unsafe practice so an owner has an opportunity to comply;
- ii. If a business entity fails to comply with a verbal order, health departments should issue an order to cease the unsafe practice;
- iii. If a business entity continues operation in an unsafe manner despite an order to cease and desist, the relevant official should issue an order to close the business entity;
- iv. If an order to close a business is issued the business shall be reported to the Secretary of State and to any relevant licensing, permitting, or certifying board, commission or other entity for consideration of revocation proceeding; and
- v. If an order to close a business is issued, the matter should be considered for referral to the local prosecuting attorney.

WHEREAS, the purpose and intent of this ordinance is to institute a requirement for all individuals in Marshall County to wear a face mask in certain locations in order to prevent or limit the spread of the COVID-19 disease unless such persons have a medical exception indicating that a face covering is ill-advised for health reasons, or the face covering prevents the persons from delivering or receiving goods or services. The face covering shall be worn at all times when physical distancing of at least six (6) feet cannot be maintained.

In order to keep businesses open and avoid lockdowns, and to address the concerns that have arisen regarding workplace safety of employees whose employers are not requiring their employees to wear face coverings as mandated by the Governor and as required by the Marshall County Health Department and the Marshall County Health Officer, and further based upon the Marshall County Health Officer and the Marshall County Board of Health's recommendations, this ordinance is to enforce those face covering requirements through the use of penalties, in line with other public safety rules and regulations.

NOW, THEREFORE BE IT ORDAINED BY THE MARSHALL COUNTY BOARD OF COMMISSIONERS as follows:

SECTION 1. This ordinance shall be in effect until the Marshall County Board of Commissioners makes a determination to renew it, change it, or rescind it. The Marshall County Board of Commissioners has the option to rescind this ordinance any time after passage of the ordinance if the Board determines the conditions within the county no longer merit the ordinance.

SECTION 2. Definitions.

- a) As used in this ordinance, a "Face Mask" means a covering made of cloth, fabric, or other soft or permeable material, without holes that covers only the nose and mouth and surrounding areas of the lower face. A covering that hides or obscures the wearer's eyes or forehead is not a Face Mask. A Face Mask may be factory-made or may be handmade and improvised from ordinary household materials. Any mask that incorporates a one-way valve (typically a raised plastic cylinder about the size of a quarter on the front or side of the mask) that is designed to facilitate easy exhaling allowing droplets to be released from the mask and therefore puts others nearby at risk, is not a Face Mask under this Ordinance and must not be used to comply with this Ordinance's requirements.
- b) As used in this Ordinance, a "Business Enterprise" includes but is not limited to any and all proprietorships, joint ventures, partnership and corporations. It includes but is not limited to

healthcare operations, grocery stores, retail business, restaurants, and any other business in which a company may be engaged. It applies to both for-profit and not-for-profit enterprises.

- c) As used in this Ordinance, a "Person" is any individual.
- d) As used in this Ordinance, the "Health Department" refers to the Marshall County Department of Health and its staff.
- e) As used in this Ordinance, the "Health Officer" refers to the Marshall County Health Officer or his or her duly authorized representative.

SECTION 3. Requirement to Wear Face Mask. Except as otherwise provided in this Ordinance, a Face Mask is required for any person or individual entering any enclosed public space or enclosed place of business. The Face Mask shall be worn at all times.

SECTION 4. Exceptions to Section 3. The requirement in Section 3 to wear a Face Mask shall not apply when:

- a) A person has a medical exception as documented by a physician's statement indicating that a Face Mask is ill-advised for health reasons. Such medical exceptions may include, but are not limited to: any Person who has trouble breathing; is unconscious, incapacitated, or otherwise unable to remove the Face Mask without assistance; respiratory conditions such as asthma and chronic obstructive lung disease; severe anxiety; autism; cerebral palsy. The physician's statement is not required to document the specific medical reason for which the Face Mask is ill-advised, but must be an affirmation by a licensed physician that the Person has such a medical exception.
- b) A Person is five (5) years of age or younger.
- c) The Face Mask prevents the Person from delivering or receiving goods or services (i.e. while eating or drinking). This exception only applies during the actual delivery or receipt of goods or services, and does not apply when a Person is not actively engaged in such delivery or receipt.

SECTION 5. COVID-19 Work-Place Safety. A Business Enterprise must:

- a) Require their employees, contractors, owners and volunteers to wear a Face Mask at the workplace and when performing work off-site anywhere the employee, contractor, owner, or volunteer would be otherwise required by this Ordinance to wear such Face Mask pursuant to Section 3.
- b) Take reasonable measures, such as posting signs, to remind their customers and the public of the requirement that they wear a Face Mask while inside the place of business.

- c) This Ordinance does not supersede Indiana or Federal OSHA workplace guidelines or the Governor's Executive Order 20-48.

SECTION 6: ENFORCEMENT.

- a) The Health Department, Health Officer, and other local officials or law enforcement officers are designated to enforce the terms and provisions of this ordinance in accordance with Indiana law.
- b) Whenever a person, business, or entity fails to comply with restrictions and the other public health requirements as set forth in the Governor's Executive Order and in this Ordinance, it is recommended that the authority enforcing said Ordinance take the following incremental steps.
 - i. Investigate the complaint or suspicion and if warranted issue a verbal order to cease the unsafe practice so a person or owner has the opportunity to comply;
 - ii. If a person or business enterprise fails to comply with the verbal order, the Health Department, Health Officer, or local official or law enforcement officer should issue a written order to cease the unsafe practice. The notice order of violation may be served by personal service; certified mail, return receipt requested; or by registered mail.
 - iii. If a person or business entity continues the unsafe practice despite an order to cease and desist, and the person or business enterprise has been given at least forty-eight (48) hours to comply with the notice of violation, the relevant official should issue an order to close the business enterprise. The order to close a business enterprise shall be reported to the Secretary of State and to any relevant licensing, permitting, or certifying board, commission, or other entity for consideration of revocation proceedings and the order should be referred to the Marshall County Prosecuting Attorney.
 - iv. If a business enterprise that receives a citation fails to pay a fine when due, the Marshall County Attorney, Health Department, or Health Officer, may institute legal action in a court of competent jurisdiction to enforce the terms and conditions of this Ordinance and the violation thereof including, but not limited to, assessment and collection of fines as provided below or the pursuit

of injunctive or other equitable relief in remedies available under Indiana Law.

- c) Fines. The monetary fine for violation of this Ordinance shall be assessed and shall be as follows:

Each violation of the Ordinance shall be \$100.00.

Each day that a violation of this Ordinance remains uncorrected shall constitute a violation which may result in the issuance of a subsequent citation.

- d) Additional Remedies. Seeking a penalty as authorized in this Ordinance does not preclude the Health Department or Health Officer from seeking alternative and additional relief from the court in the same action, or from seeking injunctive relief or other remedy in a separate action for the enforcement of this Ordinance available under applicable Indiana Law.

SECTION 7. To assist business enterprises with persons or business invitees refusing to comply with the requirements for wearing a Face Mask, if a Person refuses to wear a mask when said Person should otherwise be wearing a Face Mask as required by the Governor's Executive Order or this Ordinance, the Person shall be asked to leave the premises. If a Person having refused to wear a mask and refuses to leave the premises, that Person is subject to criminal prosecution for trespass and/or disorderly conduct, Class B Misdemeanors.

SECTION 8. The provisions of this Ordinance are severable and if any sentence, section or other part of this Ordinance shall be found invalid, such invalidity shall not affect the remaining provisions and the remaining provisions shall continue to be in full force and effect.

SECTION 9. Due to the Public Health Disaster Emergency and under authority of the Public Health Disaster Emergency Declaration, Governor Holcomb's Executive Order 20-48, and as directed by Marshall County Health Officer, Byron Holm, M.D., this Ordinance shall be in full force and effect from and after its enactment and approval by the Board of Commissioners. This Ordinance shall be distributed immediately to the public via the media, social media, and circulation with the assistance of local governments and business associations. It shall be published as required by law.

PASSED AND ADOPTED by the Marshall County Board of Commissioners this 20th day of November, 2020.

MARSHALL COUNTY COMMISSIONERS

Kevin G. Overmyer

Stan Klotz

Michael D. Burroughs

ATTEST:

Julie Fox, Auditor

RECOMMENDED AND APPROVED by Marshall County Health Officer, Byron Holm, MD, this
20th day of November, 2020.

Byron Holm, MD
Marshall County Health Officer

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