

ORDINANCE NO. 20-018

**AN URGENCY ORDINANCE OF THE
CITY OF PACIFIC GROVE TO ADOPT THE CALIFORNIA DEPARTMENT OF
PUBLIC HEALTH'S GUIDANCE FOR USE OF FACE COVERINGS
TO BE ENFORCEABLE BY MISDEMEANOR, INFRACTION OR
ADMINISTRATIVE CITATION WITHIN THE CITY OF PACIFIC GROVE**

WHEREAS, on March 19, 2020, the Governor of the State of California issued Executive Order N-33-20, ordering all individuals in the State of California to stay home or at their place of residence, except as outlined by the California Department of Public Health, during the COVID-19 pandemic for the preservation of public health and safety throughout California and to ensure that the healthcare delivery systems is capable of serving all, including those at higher risk and the most vulnerable. Executive Order N-33-20 requires all Californians to heed the state public health directives;

WHEREAS, the County of Monterey Health Officer, on March 17, 2020, issued a shelter in place order that was amended on April 3, 2020, April 28, 2020, May 1, 2020, and May 8, 2020;

WHEREAS, the County of Monterey Health Officer on May 26, 2020 issued an amended order, that was effective upon the posting by the California Department of Public Health, on its website entitled the County Health Officer's Attestation for a Variance through Stage 2 of the State's Roadmap to Pandemic Resilience;

WHEREAS, the May 26, 2020 order superseded the May 1, 2020 and May 8, 2020 Orders of the Health Officer and left the April 28, 2020 (facial coverings) and May 3, 2020 (short term lodging facilities) in effect;

WHEREAS, the County Health Officer's attestation for a variance was posted on May 30, 2020 and the County Health Officer's order dated May 26, 2020 became effective on May 30, 2020;

WHEREAS, Monterey County continues to experience increases in confirmed cases, hospitalizations, fatalities, and test positivity rates related to COVID-19;

WHEREAS, the California Department of Public Health (CDPH) has released and updated its Guidance for the Use of Face Coverings (Guidance) that states "...we have learned a lot about COVID-19 transmission, most notably that people who are infected but are asymptomatic or pre-symptomatic play an important part in community spread. The use of face coverings by everyone can limit the release of infected droplets when talking, coughing, and/or sneezing, as well as reinforce physical distancing."

WHEREAS, The CDC, CDPH, and MCHD have stated wearing a face covering, when combined with physical distancing of at least six feet and frequent hand washing, may reduce the risk of transmitting coronavirus when in public...by reducing the spread of respiratory droplets.

WHEREAS, California law allows local enforcement of state public health orders by cities, and people who fail to comply may be charged with a misdemeanor, infraction or administrative citation;

WHEREAS, the City of Pacific Grove has received numerous complaints from residents and visitors that some members of the public do not heed the Guidance, and the number of infected persons in Monterey County is rapidly rising;

WHEREAS, crowded locations in the City of Pacific Grove on occasion have experienced numbers of people to not properly use face coverings and fail to maintain six-foot social distancing from other individuals, which seriously impedes community efforts to stem the local transmission of COVID-19;

WHEREAS, the intent of this urgency ordinance is to provide a tool, in addition to education, to compel compliance with the Guidance by authorizing enforcement of the Guidance through the issuance of misdemeanor, infraction or administrative citations pursuant to the Pacific Grove Municipal Code;

WHEREAS, Article 15 of the City Charter enables the Council to enact an urgency ordinance when the measure is needed by an emergency to preserve the public peace, health, safety or public welfare; and

WHEREAS, this ordinance is an urgency ordinance necessary for the immediate preservation of the public health, safety and welfare;

WHEREAS, an urgency ordinance takes immediate effect and is necessary to avoid the immediate threat to public peace, health, and safety. Failure to adopt this urgency ordinance would impede efforts to stem the local transmission of COVID-19. The City has a compelling interest to stop the spread of this communicable disease, and authorizing an administrative enforcement tool for failure to comply with CDPH's Guidance is a narrowly tailored means of achieving that objective;

WHEREAS, this urgency ordinance is exempt from the California Environmental Quality Act Guidelines (Article 18, Section 15269.c) because the City is adopting an urgency ordinance related to COVID-19. Specific actions are needed to prevent or mitigate the spread of COVID-19 such as, but not limited to, infraction citation or administrative enforcement of face covering guidance. The actions proposed are immediate actions and are necessary to protect the health and safety of the City's citizens.

NOW, THEREFORE, the City Council of the City of Pacific Grove does hereby ordain as follows:

SECTION 1. Recitals.

The recitals set forth above are true and correct and are adopted as findings of the City

Council as though set forth fully herein.

SECTION 2. Declaration of Urgency.

The City Council finds it is necessary to adopt this ordinance pursuant to California Government Code to protect the public health, welfare and safety.

SECTION 3. Face Mask Requirements.

The California Department of Public Health (CDPH) Guidance for the Use of Face Coverings (Guidance), guidelines and exemptions concerning the use of face coverings, as may be amended from time to time, are hereby expressly acknowledged and declared to be enforceable within the City of Pacific Grove as if directly enacted by ordinance of the City in accord with the City Charter.

SECTION 4. Rebuttable Presumption.

A rebuttable presumption is hereby established that it is not feasible for persons to maintain a distance of at least six feet away from persons who are not members of the same household or residence provided one or more of the following circumstances exist:

- The person is in line to enter any public or private space unless exempted by State Guidance; or
- The person is at a Public Park.

This presumption may be rebutted by a preponderance of the evidence.

SECTION 5. Face Mask Enforcement.

Any person who violates Face Mask Requirements contained in the CDPH Guidance is in violation of this Ordinance and is subject to citation for a misdemeanor, an infraction or under the administrative citation process as provided by Chapters 1.16 (Violations), and 1.19 (Municipal Code and Ordinance Enforcement) of the Pacific Grove Municipal Code (PGMC). The fine for the first violation of this Ordinance shall be \$100, second violation by the same person shall be \$200, and third and all subsequent violations by the same person shall be \$500. Notwithstanding the authority to issue citations, enforcement officers shall place an emphasis on educational efforts, and shall hold discretion to issue warning notices in lieu of citations for first-time offenders.

Failure to comply with CDPH Guidance shall also constitute a public nuisance.

SECTION 6. Interpretation.

This Ordinance shall be liberally construed to provide maximum possible protections for the residents and visitors of the City of Pacific Grove.

SECTION 7. Conflict.

Any ordinance and part of an ordinance in conflict with this Urgency Measure shall be suspended for the effective period of this Ordinance.

SECTION 8. Enforcement Officers.

For purposes of this Ordinance and the PGMC, the term "enforcement officer" shall mean and refer to any employee or agent of the city holding authority to enforce violations of this code or an ordinance as designated an enforcement officer by the city manager.

SECTION 9. Severability.

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application. To this end, the provisions of this ordinance are severable.

SECTION 10. Effective Date.

In accordance with Government Code section 65858 and Article 15 of the City Charter, this ordinance shall take immediate effect upon adoption by a 5/7ths vote of the City Council. This ordinance shall sunset when the Guidelines are terminated by the CDPH or by the City Council, whichever occurs first. Upon adoption, this ordinance supersedes/terminates the Order of the Director of Emergency Services dated June 29, 2020.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE THIS 5th day of August, 2020, by the following vote:

AYES: Mayor Peake, Mayor Pro Tem Huitt, Councilmembers Amelio, Garfield, McAdams, Smith, and Tomlinson

NOES: None.

ABSENT: None.

APPROVED:

DocuSigned by:
Bill Peake
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BILL PEAKE, Mayor

ATTEST: 8/6/2020

DATED: _____

DocuSigned by:

Sandra Kandell

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SANDRA KANDELL, City Clerk

APPROVED AS TO FORM:

DocuSigned by:

David C. Laredo

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DAVID C. LAREDO, City Attorney



SONIA Y. ANGELL, MD, MPH
State Public Health Officer & Director

State of California—Health and Human Services Agency
California Department of Public Health



GAVIN NEWSOM
Governor

Released June 18, 2020

- Revised on June 29, 2020 to clarify that children under two years old are exempt from wearing face coverings due to risk of suffocation

GUIDANCE FOR THE USE OF FACE COVERINGS

Because of our collective actions, California has limited the spread of COVID-19 and associated hospitalizations and deaths in our state. Still, the risk for COVID-19 remains and the increasing number of Californians who are leaving their homes for work and other needs, increases the risk for COVID-19 exposure and infection.

Over the last four months, we have learned a lot about COVID-19 transmission, most notably that people who are infected but are asymptomatic or pre-symptomatic play an important part in community spread. The use of face coverings by everyone can limit the release of infected droplets when talking, coughing, and/or sneezing, as well as reinforce physical distancing.

This document updates existing [CDPH guidance](#) for the use of cloth face coverings by the general public when outside the home. It mandates that face coverings be worn state-wide in the circumstances and with the exceptions outlined below. It does not substitute for existing guidance about social distancing and handwashing.

Guidance

People in California must wear face coverings when they are in the high-risk situations listed below:

- Inside of, or in line to enter, any indoor public space;¹
- Obtaining services from the healthcare sector in settings including, but not limited to, a hospital, pharmacy, medical clinic, laboratory, physician or dental office, veterinary clinic, or blood bank;²
- Waiting for or riding on public transportation or paratransit or while in a taxi, private car service, or ride-sharing vehicle;
- Engaged in work, whether at the workplace or performing work off-site, when:
 - Interacting in-person with any member of the public;
 - Working in any space visited by members of the public, regardless of whether anyone from the public is present at the time;

¹ Unless exempted by state guidelines for specific public settings

² Unless directed otherwise by an employee or healthcare provider



- Working in any space where food is prepared or packaged for sale or distribution to others;
- Working in or walking through common areas, such as hallways, stairways, elevators, and parking facilities;
- In any room or enclosed area where other people (except for members of the person's own household or residence) are present when unable to physically distance.
- Driving or operating any public transportation or paratransit vehicle, taxi, or private car service or ride-sharing vehicle when passengers are present. When no passengers are present, face coverings are strongly recommended.
- While outdoors in public spaces when maintaining a physical distance of 6 feet from persons who are not members of the same household or residence is not feasible.

The following individuals are exempt from wearing a face covering:

- Persons younger than two years old. These very young children must not wear a face covering because of the risk of suffocation.
- Persons with a medical condition, mental health condition, or disability that prevents wearing a face covering. This includes persons with a medical condition for whom wearing a face covering could obstruct breathing or who are unconscious, incapacitated, or otherwise unable to remove a face covering without assistance.
- Persons who are hearing impaired, or communicating with a person who is hearing impaired, where the ability to see the mouth is essential for communication.
- Persons for whom wearing a face covering would create a risk to the person related to their work, as determined by local, state, or federal regulators or workplace safety guidelines.
- Persons who are obtaining a service involving the nose or face for which temporary removal of the face covering is necessary to perform the service.
- Persons who are seated at a restaurant or other establishment that offers food or beverage service, while they are eating or drinking, provided that they are able to maintain a distance of at least six feet away from persons who are not members of the same household or residence.
- Persons who are engaged in outdoor work or recreation such as swimming, walking, hiking, bicycling, or running, when alone or with household members, and when they are able to maintain a distance of at least six feet from others.

- Persons who are incarcerated. Prisons and jails, as part of their mitigation plans, will have specific guidance on the wearing of face coverings or masks for both inmates and staff.

Note: Persons exempted from wearing a face covering due to a medical condition who are employed in a job involving regular contact with others should wear a non-restrictive alternative, such as a face shield with a drape on the bottom edge, as long as their condition permits it.

Background

What is a cloth face covering?

A cloth face covering is a material that covers the nose and mouth. It can be secured to the head with ties or straps or simply wrapped around the lower face. It can be made of a variety of materials, such as cotton, silk, or linen. A cloth face covering may be factory-made or sewn by hand or can be improvised from household items such as scarfs, T-shirts, sweatshirts, or towels.

How well do cloth face coverings work to prevent spread of COVID-19?

There is scientific evidence to suggest that use of cloth face coverings by the public during a pandemic could help reduce disease transmission. Their primary role is to reduce the release of infectious particles into the air when someone speaks, coughs, or sneezes, including someone who has COVID-19 but feels well. Cloth face coverings are not a substitute for physical distancing, washing hands, and staying home when ill, but they may be helpful when combined with these primary interventions.

When should I wear a cloth face covering?

You should wear face coverings when in public places, particularly when those locations are indoors or in other areas where physical distancing is not possible

How should I care for a cloth face covering?

It's a good idea to wash your cloth face covering frequently, ideally after each use, or at least daily. Have a bag or bin to keep cloth face coverings in until they can be laundered with detergent and hot water and dried on a hot cycle. If you must re-wear your cloth face covering before washing, wash your hands immediately after putting it back on and avoid touching your face. Discard cloth face coverings that:

- No longer cover the nose and mouth
- Have stretched out or damaged ties or straps
- Cannot stay on the face
- Have holes or tears in the fabric

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