Counties and Their Authority to Require Face Coverings

Governor Brian Kemp’s August 15, 2020, Executive Order provides for two separate types of authority regarding face mask requirements. One applies to all counties and the other is limited to counties that meet certain threshold requirements.

**Masks and Other Requirements on County Property.** Except for polling places, county governments (and cities and government authorities, boards, bureaus, and commissions) may require terms of entry to county owned or leased property.¹ This includes requiring a face mask or face covering.² However, no one may be denied entrance or exit to or from a Polling Place (i.e., the room provided in each precinct for voting)³ for failure to wear a mask.⁴ While the EO specifically mentions face masks, in terms of describing what measures may be taken to control entry, it does not mention any other specific types of measures. A county has the authority to control terms of entry to county property “regardless of whether the Threshold Requirement is met”⁵ (i.e. the requirements described below).

**Mask Requirements in Public and Private Spaces in Certain Counties.** Counties that meet the Threshold Requirement (i.e., the county must have confirmed cases greater than or equal to 100 cases per 100,000 people according to DPH over the most recent 14 day period)⁶ may decide to impose a Local Option Face Covering Requirement⁷ under certain circumstances where a minimum of six feet cannot be maintained between individuals not living in the same residence.⁸ The requirements apply on county property and certain private property (as described below). The county must make a good faith, reasonable effort to distribute free masks to individuals who cannot afford a mask.⁹

In general, any individual not complying with the county’s Local Option Face Covering Requirement may be subject to a fine, fee, or penalty up to $50.¹⁰ Before issuing any citation for a violation, the county must warn the individual about the health risks posed by not wearing a mask. Anyone found in violation who cannot afford a mask must be provided one at the expense of the county.¹¹ Violations may not be punished by imprisonment.¹²

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¹ Page 39.
² Page 39.
³ O.C.G.A. § 21-2-2(27).
⁴ Page 39.
⁵ Page 39.
⁶ Pages 9-10
⁷ Pages 8-9, see definition of ‘Local Option Face Covering Requirement’.
⁸ See pages 8-9.
⁹ Page 39.
¹⁰ Page 38.
¹¹ Page 39.
¹² Page 38.
However, there are certain instances where the mask requirement may not be enforced:

1. On residential property;\(^{13}\)

2. On private property where the owner or occupant does not consent to enforcement. It is important to note that businesses, establishments, corporations, nonprofit corporation, and organizations may be required to post a sign putting the public on notice of the mask requirement and state whether the business consents or does not consent to enforcement of the mask requirement.\(^{14}\)

3. In Polling Places\(^{15}\) (i.e., the room provided in each precinct for voting).\(^{16}\) Additionally, no person may be denied ingress to or egress from a Polling Place for failure to wear a mask.\(^{17}\)

4. Against any private business, establishment, corporation, nonprofit corporation, or organization.\(^{18}\) Similarly, no business owner, director, officer, or agent may be held liable for failure of their customers to comply with the mask requirement.\(^{19}\)

Additionally, a Local Option Face Covering Requirement must exempt individuals who:

1. Are eating or drinking are not required to wear a mask or covering;

2. Have difficulty putting on or removing a mask or covering without assistance; and

3. With a bona fide medical reason not to wear a mask or covering.\(^{20}\)

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\(^{13}\) Page 39.

\(^{14}\) Page 39.

\(^{15}\) Page 39.

\(^{16}\) O.C.G.A. § 21-2-2(27).

\(^{17}\) Page 39.

\(^{18}\) Page 38.

\(^{19}\) Pages 38-39.

\(^{20}\) Page 38.