



Model Public Face Mask Ordinance

Local Option Face Covering Requirement

Background. On August 15, 2020, Governor Brian Kemp issued Executive Order 08.15.20.01 (“the EO”), that provides local governments with two separate types of authority regarding face mask requirements:

1. *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 property¹. 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). A county may adopt an ordinance or policy regarding masks and other requirements on county property even if the county does not have confirmed cases greater than or equal to 100 cases per 100,000 people according to DPH over the most recent 14 day period (i.e., the county does not have to meet the Threshold Requirement to require masks and other precautions before entering county buildings)⁶

This type of ordinance or policy covering county property is not covered in the attached model ordinance. ACCG does have a Model Face Mask and Other Requirements on County Property Resolution available in a separate guidance (Model Face Mask on County Property Resolution).

2. *Mask Requirements in Public and Private Spaces in Certain Counties.* Counties that meet the Threshold Requirement 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. The face mask requirements may apply on county property and certain private property other than residential property and polling places. It may not be enforced on private properties (i.e., businesses, nonprofit organizations, etc.) unless the property owner or occupant consents to the enforcement. The county must make a good faith, reasonable effort to

¹ Executive Order 08.15.20.01, page 39.

² Executive Order 08.15.20.01, page 39.

³ O.C.G.A. § 21-2-2(27).

⁴ Executive Order 08.15.20.01, page 39.

⁵ Executive Order 08.15.20.01, page 39.

⁶ Executive Order 08.15.20.01, pages 9-10.

⁷ Executive Order 08.15.20.01, page 8-9, see definition of “Local Option Face Covering Requirement.”

distribute free masks to individuals who cannot afford a mask.⁸

The Threshold Requirement. Only counties that meet the Threshold Requirement may require masks. In order to meet the Threshold Requirement, the county must have confirmed cases greater than or equal to 100 cases per 100,000 people according to the Georgia Department of Public Health over the most recent 14 day period.⁹ The department has provided a map on its [COVID-19 DPH Daily Status Report](#) for counties utilize to monitor the case thresholds when considering Local Option Face Covering Requirements. There is a “Cases per 100,000 (last 2 weeks)” line in the dropdown data for each county.

Enforcement. 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.¹¹ Anyone found in violation who cannot afford a mask must be provided one at the expense of the county.¹² Violations may not be punished by imprisonment.¹³

However, there are certain instances where the mask requirement may not be enforced:

- a) On residential property;¹⁴
- b) 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.¹⁵
- c) In Polling Places¹⁶ (i.e., the room provided in each precinct for voting).¹⁷ Additionally, no person may be denied ingress to or egress from a Polling Place for failure to wear a mask.¹⁸
- d) Against any private business, establishment, corporation, nonprofit corporation, or organization.¹⁹ Similarly, no business owner, director, officer, or agent may be held liable for failure of their customers to comply with the mask requirement.²⁰

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

⁸ Executive Order 08.15.20.01, page 39.

⁹ Executive Order 08.15.20.01, pages 9-10

¹⁰ Executive Order 08.15.20.01, page 38.

¹¹ Executive Order 08.15.20.01, page 39.

¹² Executive Order 08.15.20.01, page 39.

¹³ Executive Order 08.15.20.01, page 38.

¹⁴ Executive Order 08.15.20.01, page 39.

¹⁵ Executive Order 08.15.20.01, page 39.

¹⁶ Executive Order 08.15.20.01, page 39.

¹⁷ O.C.G.A. § 21-2-2(27).

¹⁸ Executive Order 08.15.20.01, page 39.

¹⁹ Executive Order 08.15.20.01, page 38.

²⁰ Executive Order 08.15.20.01, pages 38-39.

- a) Are eating or drinking are not required to wear a mask or covering;
- b) Have difficulty putting on or removing a mask or covering without assistance; and
- c) With a bona fide medical reason not to wear a mask or covering.²¹

About the Model Ordinance. This model ordinance is provided for general informational purposes in order to assist counties that meet the Threshold Requirement and desire to require citizens to wear masks or face coverings while in the unincorporated area of the county in accordance with Governor Brian Kemp's Executive Order 08.15.20.01 ("the EO"). This model ordinance is not and should not be treated as legal advice. County staff should consult with the county attorney before drafting, adopting, or taking any action based on this model.

This model ordinance is based on the model ordinance prepared by the Georgia Municipal Association. The ACCG Legal Department wishes to thank the GMA for its assistance in preparing this ordinance.

²¹ Executive Order 08.15.20.01, page 38.

ORDINANCE OF _____ COUNTY REQUIRING THE USE OF MASKS OR FACE COVERINGS IN PUBLIC DURING THE COVID-19 OUTBREAK

WHEREAS, the World Health Organization declared COVID-19 a worldwide pandemic as of March 11, 2020;

WHEREAS, on March 13, 2020, President Donald Trump declared a national emergency in response to the outbreak of COVID-19;

WHEREAS, on March 14, 2020, Governor Brian Kemp declared that a public health emergency exists in the State of Georgia due to the spread of COVID-19 within Georgia;

WHEREAS, a significant number of Georgia residents are at risk of serious health complications, including death, from COVID-19;

WHEREAS, a large number of persons with serious infections can compromise the ability of the healthcare system to deliver necessary care to the public;

WHEREAS, individuals diagnosed with COVID-19 have been known to experience long-term health effects following recovery from acute COVID-19 symptoms;

WHEREAS, COVID-19 is a respiratory illness, transmitted through person-to-person contact or by contact with surfaces contaminated with the virus. While much is still unknown about the virus, it appears that individuals exposed to COVID-19 may become infected, with or without symptoms, within two to fourteen days after exposure;

WHEREAS, infected persons who do not have symptoms or have not begun to experience symptoms are known to be contagious and, without mitigation, are unknowingly spreading COVID-19 throughout the community;

WHEREAS, respiratory droplets spread by coughing, sneezing, breathing, or talking from infected persons are a major mode of COVID-19 transmission. This understanding is the basis of the recommendations for physical distancing and of the personal protective equipment guidance. Infected respiratory droplets can be generated from an individual by coughing or sneezing, as well as talking, singing and/or simply breathing;

WHEREAS, evidence indicates that the use of face coverings reduces the transmission of infected droplets in both laboratory and clinical contexts.²² With what is known about the transmission of COVID-19 at this time, wearing a face covering or mask is one of the most effective ways of stopping the spread of the virus when mask wearing compliance is high. This evidence supports the conclusion that the adoption of more widespread face covering requirements can help to control the COVID-19 epidemic by reducing the shedding of droplets into the environment from asymptomatic, presymptomatic and symptomatic individuals;

WHEREAS, evidence from the South Carolina Department of Health and Environmental Control

²² "COVID-19: Considerations for Wearing Masks." Centers for Disease Control and Prevention, Centers for Disease Control and Prevention, 7 Aug. 2020, www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover-guidance.html.

announced on August 12, 2020, that parts of the State of South Carolina under public mask-wearing mandates registered a 46.3% drop in coronavirus cases in the four weeks after they were introduced as compared to areas of the state which did not impose such mandates;²³

WHEREAS, according to Dr. Karen Landers of the Alabama Department of Health, the number of positive COVID-19 cases statewide dropped since Alabama's mask mandate went into effect from a high of 16.7% on July 18 to 11.1% on August 15, 2020;²⁴

WHEREAS, according to a Vanderbilt University study, hospitals in the State of Tennessee where at least 75% of patients came from mask-mandate counties reported hospitalizations rising by only 30% since July 1, 2020, as compared to a rise of 200% in the same time period when 75% or more of patients came from counties without mask mandates in the State of Tennessee;²⁵

WHEREAS, Governor Kemp has repeatedly and strenuously urged Georgians to wear a mask or face covering in public as a simple but highly effective way of preventing the spread of COVID-19 ;²⁶

WHEREAS, specifically, Governor Kemp, through Executive Order 05.12.20.02 and subsequent Executive Orders, has recommended that individuals wear face coverings over the nose and mouth to mitigate the spread of COVID-19 when they are in public places where they cannot practice social distancing (i.e., staying at least six feet away from other individuals who do not share the same household);

WHEREAS, guidelines published by the U.S. Centers for Disease Control (CDC) recommend that all people wear cloth face coverings in public settings where other physical distancing measures may be difficult to maintain.²⁷ The CDC also advises the use of simple cloth face coverings to slow the spread of the virus and help people who may have the virus and do not know it from transmitting it to others;

WHEREAS, the White House Coronavirus Task Force has repeatedly called for the wearing of masks in the State of Georgia;²⁸

WHEREAS, decreased transmissibility due to face covering use could substantially reduce the number of illnesses, hospitalization, and deaths and reduce the negative economic impact of the COVID-19 pandemic

²³ Dr. Bell: "Data Shows That Wearing Face Masks Works"; Latest COVID-19 Update (August 12, 2020), South Carolina Department of Health and Environmental Control, 12 Aug. 2020, www.scdhec.gov/index.php/news-releases/dr-bell-data-shows-wearing-face-masks-works-latest-covid-19-update-august-12-2020.

²⁴ Paul Gattis. "North Alabama COVID Cases Drop; Mask Order Making Impact." *Al, Advance Local Media LLC*, 15 Aug. 2020, www.al.com/news/2020/08/one-month-since-mask-order-north-alabama-seeing-decline-in-coronavirus-cases.html.

²⁵ Graves, John, et al. Vanderbilt University Medical Center, 2020, Masking Requirements and Hospitalizations in Tennessee.

²⁶ "Governor Kemp Calls on Georgians to Do 'Four Things for Four Weeks' to Stop COVID-19." Governor Brian P. Kemp Office of the Governor, 21 July 2020, gov.georgia.gov/press-releases/2020-07-21/governor-kemp-calls-georgians-do-four-things-four-weeks-stop-covid-19); "Gov. Kemp Launches 'Safety Promise' Campaign to Urge Georgians to Heed Public Health Guidance." Governor Brian P. Kemp Office of the Governor, 6 July 2020, gov.georgia.gov/press-releases/2020-07-06/gov-kemp-launches-safety-promise-campaign-urge-georgians-heed-public; FOX 5 Atlanta. "Governor Brian Kemp Begins 'Wear a Mask' Tour." FOX 5 Atlanta, FOX 5 Atlanta, 1 July 2020, www.fox5atlanta.com/news/governor-brian-kemp-begins-wear-a-mask-tour.

²⁷ "CDC Calls on Americans to Wear Masks to Prevent COVID-19 Spread." Centers for Disease Control and Prevention, Centers for Disease Control and Prevention, 14 July 2020, www.cdc.gov/media/releases/2020/p0714-americans-to-wear-masks.html.

²⁸ See, Whyte, Liz Essley. "White House Document Shows 18 States in Coronavirus 'Red Zone.'" Center for Public Integrity, 16 July 2020, publicintegrity.org/health/coronavirus-and-inequality/exclusive-white-house-document-shows-18-states-in-coronavirus-red-zone-covid-19/; and "Read the Latest Federal Report on States' Response to the Virus." *The New York Times*, The New York Times, 28 July 2020, www.nytimes.com/interactive/2020/07/28/us/states-report-virus-response-july-26.html.

and the cost of the intervention of mandating the wearing of masks is extremely low;

WHEREAS, O.C.G.A. § 38-3-28(a) grants political subdivisions the power to supplement the Governor's Executive Orders so long as such actions are consistent with the Governor's Orders;

WHEREAS, this Ordinance is intended to be entered with due regard to the widely accepted, scientifically proven uniform principle that masks or face coverings will slow the spread of COVID-19;

WHEREAS, pursuant to O.C.G.A. § 38-3-51, the Governor's declared public health emergency authorizes counties to use emergency powers in O.C.G.A. §§ 38-3-1 through 38-3-64;

WHEREAS, pursuant to O.C.G.A. § 38-3-6, during an emergency, O.C.G.A. §§ 38-3-1 through 38-3-64 are supposed to be liberally construed to effectuate their purposes;

WHEREAS, on August 15, 2020, Governor Kemp issued Executive Order 08.15.20.01, which specifically offers guidelines for Local Option Face Covering Requirements;

WHEREAS, the United States Supreme Court has previously held that "[u]pon the principle of self-defense, of paramount necessity, a community has the right to protect itself against an epidemic of disease which threatens the safety of its members;"²⁹

WHEREAS, the following actions related to requiring face coverings in public are necessary and appropriate to balance the public's interest in not being unduly burdened with the compelling public interest of providing for the health, safety and welfare of the residents of the county;

WHEREAS, the goal of this Ordinance is to increase the usage of face coverings and masks and not revenue generation; and

WHEREAS, the County shall make reasonable efforts to provide or cause to provide face coverings and face masks for those who cannot afford them.

NOW, THEREFORE, BE IT RESOLVED that for the protection of members of the public, face coverings or masks shall be required within the county to slow the spread of COVID-19 as follows:

SECTION 1.

(a) The provisions of this Ordinance shall only be enforced the county while the prevalence of confirmed cases of COVID-19 over the previous fourteen (14) days is equal to or greater than one hundred (100) cases per one hundred thousand (100,000) people according to the Georgia Department of Public Health.

(b) As used in this Ordinance, the term:

(1) "Business" means any private business, establishment, corporation, non-profit corporation, or organization, including the land surrounding and attached to the business.

(2) "Face covering" means a mask or other device to cover the nose and mouth of a person and impedes the spread of saliva, respiratory droplets, or other fluids during speaking, coughing,

²⁹ Jacobson v. Massachusetts, 197 US 11 (1905).

sneezing or other intentional or involuntary action. Medical grade masks are not required; coverings may be fashioned as advised by the CDC and from other suitable fabrics. The face covering must cover the mouth and nose of the wearer.

- (3) "Polling place" means the room provided in each precinct for voting at a primary or election.
 - (4) "Public place" means any place other than a personal vehicle, residential property, or a business including the land surrounding and attached thereof.
- (c) Except as otherwise provided in this Ordinance, all persons in a business or a public place shall always wear a face covering over the mouth and nose where other physical distancing measure may be difficult to maintain from non-cohabitating persons.
- (d) Face coverings are not required in the following circumstances:
- (1) In personal vehicles or upon residential property;
 - (2) When a person is alone in enclosed spaces or only with other household members;
 - (3) When the individual has a bona fide religious objection to wearing a face covering;
 - (4) While drinking or eating;
 - (5) When a licensed healthcare provider has determined that wearing a face covering causes or aggravates a health condition for the individual or when such person has a bona fide medical reason for not wearing a face covering;
 - (6) When wearing a face covering would prevent the receipt of personal services or performing work during employment;
 - (7) When complying with the directions of a law enforcement officer or for the purposes of verifying a person's identity, such as when purchasing alcohol, tobacco, or prescription drugs or when engaging in a financial transaction;
 - (8) Children under the age of two years;
 - (9) When the individual is having difficulty donning or removing a face covering without assistance;
 - (10) At any polling place and no individual shall be denied ingress or egress to or from a polling place for failure to wear a face covering; and
 - (11) When outdoors and maintaining social distancing from anyone other than individuals with whom they cohabit.
- (e) (1) Every business subject to this Ordinance that does not consent to enforcement of this Ordinance upon its property shall post a clearly legible sign in one inch Arial font at all public entrances of such business stating the following: "A face covering or mask is required by the County. This location does not consent to enforcement of the local face covering requirement upon this property."

- (2) If a business does not post the signage described in paragraph (1) of this subsection it shall be conclusively presumed to have consented to enforcement of this Ordinance on its property and failures by individuals to wear face coverings as required by this Ordinance shall be determined to be violations and enforced as contemplated in subsection (f) of this Ordinance.
- (f) Violations of this Section may be enforced by a notice of ordinance violation issued by any code enforcement officer or law enforcement official, as provided below:
- (1) A person who fails to comply with subsection (c) of this Section shall receive an explanation about the health risks posed by not wearing a face mask or face covering. Such individual shall be provided an opportunity to put on a face covering, to explain an inability to afford a face mask or face covering or provide an explanation of the applicability of one of the exceptions in subsection (d) of this Section. If the individual indicates that they cannot afford a mask, the code enforcement officer or law enforcement officer shall provide one.
 - (2) If the person violating this Ordinance refuses or fails to comply with this Ordinance after being given a warning and an opportunity to comply pursuant to paragraph (1) of this subsection, then such person may be subject to a civil penalty of not more than \$25.00 on the first offense and not more than \$50.00 on the second and any subsequent offenses.
 - (3) A notice of violation may be served by delivery into the hands of the suspected violator or by other reasonable process for serving notice of ordinance violations used by the county.
 - (4) Violations of this ordinance shall not be enforced against any business and shall not be taken against any owner, director, officer, or agent of an business for the failure of their customers to comply with this ordinance.
 - (5) Notwithstanding the foregoing, every effort shall be made to bring an individual into voluntary compliance with the terms of this Ordinance prior to issuance of any notice of violation, including providing complimentary face coverings, explaining the importance of wearing face coverings during this pandemic, and issuing verbal and written warnings.
- (g) In all locations where face coverings are not required to be worn pursuant to this Ordinance, they are strongly encouraged to be worn.

SECTION 2.

This Ordinance shall be effective immediately and shall remain in effect until revised or repealed by further action of the Board of Commissioners of _____ County.

SECTION 3.

Should any provision, paragraph, sentence, or word of this Ordinance be rendered or declared invalid by any final court of competent jurisdiction, the remaining provisions, paragraphs, sentences, or words of this Ordinance shall remain in full force and effect.

SECTION 4.

Should any ordinance or part thereof be found to conflict with this ordinance or the provisions thereof,

then those sections contained herein shall be deemed controlling.

SO ORDAINED, this _____ day of _____, 2020.

BOARD OF COMMISSIONERS OF
_____ **COUNTY, GEORGIA**

Chair

ATTEST:

County Clerk

Approved as to Legal Form:

County Attorney