

ATTACHMENT B

ORDINANCE NO. _____

AN URGENCY ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, REQUIRING THE USE OF FACE COVERINGS INDOORS BY ALL PERSONS IN THE COUNTY OF MONTEREY OVER THE AGE OF TWO (2) REGARDLESS OF VACCINATION STATUS, WITH LIMITED EXCEPTIONS

County Counsel Summary

This urgency ordinance requires the use of face coverings in all indoor spaces within Monterey County by all persons over the age of two (2) regardless of vaccination status with limited exceptions. This ordinance is effective immediately; however, the facial covering requirement will be effective at 12:01 a.m. September 13, 2021, until the earlier of 12:01 a.m. November 12, 2021, or rescinded or terminated by the Board of Supervisors, unless renewed or extended.

WHEREAS, on March 5, 2020, Governor Newsom issued a Proclamation of State of Emergency in response to the COVID-19 pandemic, waived the 60-day time period in Government Code section 8630 within which local governments must renew a local emergency, and ordered that Local States of Emergency would stay in effect until terminated; and,

WHEREAS, Section 2.68.060 of the Monterey County Code and Section 8630 of the Government Code empower the County Administrative Officer, or the Board of Supervisors if in session, to proclaim the existence of a local emergency when the County is affected or likely to be affected by a public calamity; and,

WHEREAS, on March 6, 2020, pursuant to the Monterey County Code and Government Code section 8630, Monterey County Administrative Officer Charles J. McKee signed a Proclamation of Local Emergency in response to the COVID-19 pandemic proclaiming a local emergency throughout Monterey County including the unincorporated and incorporated areas; and,

WHEREAS, on March 10, 2020, the Monterey County Board of Supervisors ratified the Proclamation of Local Emergency by the County Administrative Officer; and,

WHEREAS, California Department of Public Health (CDPH) and the Centers for Disease Control and Prevention (CDC) caution that the Delta variant of COVID-19, currently the dominant strain of COVID-19 in the country, is more transmissible than prior variants of the virus, may cause more severe illness, and that even fully vaccinated individuals can spread the virus to others resulting in rapid and alarming rates of COVID-19 cases and hospitalizations (<https://www.cdc.gov/coronavirus/2019-ncov/variants/delta-variant.html>); and,

WHEREAS, Monterey County is a popular tourist destination, attracting visitors from around the State and County including many places with more serious community transmission rates of COVID-19; and,

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WHEREAS, on July 27, 2021, the CDC issued updated guidance recommending that fully vaccinated individuals wear face coverings in public indoor settings in areas of substantial or high transmission of COVID-19 (<https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated-guidance.html>); and,

WHEREAS, on July 28, 2021, CDPH provided similar guidance recommending that all individuals regardless of vaccination status, wear face coverings in indoor public settings given the emergence of the more contagious Delta variant (<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/guidance-for-face-coverings.aspx>); and,

WHEREAS, Monterey County's COVID-19 community transmission designation by the CDC has fluctuated between "substantial" and "high" (<https://covid.cdc.gov/covid-data-tracker/#county-view>); and,

WHEREAS, a recent large scale, randomized trial study by Stanford and Yale Universities' researchers confirms the effectiveness of surgical masks in reducing the spread of COVID-19 (<https://www.poverty-action.org/publication/impact-community-masking-covid-19-cluster-randomized-trial-bangladesh>); and,

WHEREAS, recently, health officers in the Counties of Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Santa Cruz, Sonoma, and San Luis Obispo announced facial covering mandates requiring every resident to wear a face covering indoors in public settings, regardless of vaccination status, and the Cities of Berkeley, Benicia, and Vallejo adopted similar requirements; and,

WHEREAS, the Monterey County Health Officer recommends that all persons, regardless of vaccination status, wear facial coverings indoors in public settings (<https://www.co.monterey.ca.us/Home/Components/News/News/8412/1336>); and,

WHEREAS, the Board of Supervisors is empowered by Article XI, section 7 of the California Constitution to take actions necessary to protect public, health, welfare and safety within the unincorporated and incorporated areas of the County; and,

WHEREAS, the County has an important governmental interest in protecting the health, safety and welfare of its citizens and businesses; and,

WHEREAS, the California Attorney General has opined that, in locally proclaimed emergencies, a county's regulations adopted to address such emergency can be applicable in both the unincorporated and incorporated areas in situations where the emergency exists in the entire county, such as presented by the COVID-19 pandemic which does not respect political boundaries; and,

WHEREAS, in order to protect the health and safety of the County and in order to follow the sound guidance and recommendations of the CDC and CDPH, the County will impose a requirement that face coverings be worn indoors and in enclosed spaces in all of Monterey

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County in order to curtail the spread of COVID-19; and,

WHEREAS, in the interest of public health and safety, as affected by the emergency caused by the spread of COVID-19, the Monterey County Board of Supervisors finds it necessary to issue and implement this Ordinance to protect life, health and safety of its citizens and the community at large; NOW, THEREFORE,

The Board of Supervisors of the County of Monterey ordains as follows:

SECTION 1. Findings and purpose.

The recitals set forth above are true and correct. In order to address an immediate threat to the public peace, health and safety arising from the existence of the COVID-19 pandemic and the proclaimed local emergency existing throughout the County, this Ordinance mandates the use of face coverings indoors by all persons over the age of 2, in the unincorporated and incorporated areas of the County, regardless of vaccination status, with limited exceptions as set forth herein.

SECTION 2. Face Covering Requirement.

1. Regardless of vaccination status, in the unincorporated and incorporated areas of Monterey County all persons over the age of two (2) years old must wear a face covering, which covers both the mouth and nose, at all times when indoors except:
 - a. in their own residence, or in a closed room, office or vehicle alone or with members of their household;
 - b. when they are actively performing an activity that cannot be done while wearing a face covering (e.g., actively eating or drinking, swimming or showering in a fitness facility, or obtaining a medical or cosmetic service requiring removal of a face covering); or
 - c. as specifically exempted from use of face coverings under the guidance of CDPH at <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/guidance-for-face-coverings.aspx> (e.g., to communicate with someone who is hearing impaired or where a face covering poses a safety risk).
2. All businesses and governmental entities owning, operating, managing, or occupying indoor facilities must enforce this face covering requirement for all personnel and for all customers or members of the public entering their facilities, regardless of vaccination status. All such businesses and governmental entities must post clearly visible and easy-to-read signage at all entry points for indoor settings to communicate the face covering requirements to all persons entering the facility. In addition, those responsible for indoor public settings are strongly encouraged to provide face coverings at no cost to individuals who do not have one upon entry. All persons accompanying or responsible for children between the ages of two (2) and ten (10) are required to use reasonable efforts to ensure such children wear facial coverings when required.

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3. For purposes of this Ordinance:

- a. “Face covering” means a surgical mask, a medical procedure mask, a respirator worn voluntarily, or a tightly woven fabric or non-woven material of at least two layers. A face covering has no visible holes or openings and must cover the nose and mouth. A face covering does not include a scarf, ski mask, balaclava, bandana, turtleneck, collar, or single layer fabric.
- b. “Business” includes any for-profit, non-profit, or educational entity, whether a corporate entity, organization, partnership, or sole proprietorship, and regardless of the nature of the service, the function it performs, or its corporate or entity structure. For clarity, “business” also includes a for-profit, non-profit, or educational entity performing services or functions under contract with a governmental agency.
- c. “Personnel” means the following individuals who provide goods or services or perform operations associated with a business or governmental entity in the unincorporated or incorporated areas of the County: employees; contractors and sub-contractors (such as those who sell goods or perform services onsite or who deliver goods for the business); independent contractors (such as “gig workers” who perform work via the business’s application or other online interface); vendors who are permitted to sell goods onsite; volunteers; and other individuals who regularly provide services onsite at the request of the business.

SECTION 3. Effective date of facial covering requirement and termination.

The requirements of this Ordinance shall be effective at 12:01 a.m. on Monday, September 13, 2021, and shall terminate at the earlier to occur of 12:01 a.m. on Friday, November 12, 2021 or upon order of the Board of Supervisors, unless renewed or extended.

SECTION 4. Enforcement.

A violation of this Ordinance may be processed as an administrative violation pursuant to the provisions of Monterey County Code Chapter 1.22. For purposes of this Ordinance only, the term “enforcement official” includes any officer, employee, or agent of a City within the County or any deputy or designee of such officer, employee, or agent, that is charged with responsibility for enforcement of any provision of state or local law.

SECTION 5. Stricter Requirements.

Where a conflict exists between this Ordinance and any order issued by the State Public Health Officer, the Governor, or a State agency (such as the California Division of Occupational Safety and Health (Cal/OSHA)) related to the COVID-19 pandemic, the most restrictive provision controls. For clarity, all individuals and entities must comply with the State Order, any mandatory guidance issued by the California Department of Public Health, any mandatory orders

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of the Governor or a State agency, or any other mandatory provision of State law to the extent it is stricter than any provision of this Ordinance. In addition, to the extent any federal guidelines are inconsistent with this Order, this Ordinance is controlling.

SECTION 6. Other Provisions.

- a. This Ordinance shall be liberally construed to provide the broadest possible protection for the citizens of the County.
- b. The County Administrative Officer, the County Counsel, and all other County officers and department heads, are authorized and directed to take such other and further actions as may be necessary or appropriate to implement the intent and purposes of this Ordinance.
- c. All City Managers, City Attorneys and all other City officers and department heads, are requested to take such other and further actions as may be necessary or appropriate to implement the intent and purposes of this Ordinance within their respective jurisdictions.

SECTION 7. Severability.

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The Board of Supervisors hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

SECTION 8. Effective date.

This Ordinance shall take effect immediately as an urgency Ordinance. This is based on the Board of Supervisors finding that this Ordinance is adopted in compliance with Government Code Section 25123, that it is necessary for the protection of the public health and safety, and that it is necessary to prevent the residents of the County of Monterey from suffering preventable injury and deaths from COVID-19. Notwithstanding the effective date of this Ordinance, the effective date of the facial covering requirement is as set forth in Section 3, above.

PASSED AND ADOPTED this ____ day of _____, 2021, by the following vote:

AYES:

NOES:

ABSENT:

Wendy Root Askew, Chair,
Monterey County Board of Supervisors

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A T T E S T :

VALERIE RALPH
Clerk of the Board

By: _____
Deputy

APPROVED AS TO FORM:

LESLIE J. GIRARD
County Counsel