



MONROE COUNTY EMERGENCY MANAGEMENT
EMERGENCY DIRECTIVE 20-10

June 26, 2020

SUBJECT: Mandatory Face Covering Rules

WHEREAS, on March 1, 2020, the Governor of Florida issued Executive Order Number 20-51, directing the State Health Officer and Surgeon General to declare a Public Health Emergency due to the discovery of COVID-19/novel Coronavirus in Florida; and

WHEREAS, on March 9, 2020, the Governor of Florida issued Executive Order Number 20-52, declaring a State of Emergency for the state of Florida related to COVID-19/novel Coronavirus; and

WHEREAS, on March 11, 2020, the World Health Organization declared the spread of COVID-19 to be a global pandemic; and, on March 13, 2020, President Trump declared a national emergency concerning COVID-19; and

WHEREAS, Section 252.38(3)(a), Florida Statutes, gives political subdivisions the authority to declare and enact a State of Local Emergency for a period of up to seven days, thereby waiving the procedures and formalities otherwise required of the political subdivision by law; and

WHEREAS, on March 15, 2020, the County Mayor declared a State of Emergency in order for the County to take actions to protect the health, safety, and welfare of the community due to the novel coronavirus, COVID-19 pandemic; and

WHEREAS, that declaration and Section 11-3 of the Monroe County Code vest the Emergency Management Director with the authority to issue emergency directives; and

WHEREAS, on March 24, 2020, the Governor of Florida issued Executive Order 20-83, directing the Surgeon General and State Health Officer to issue a public health advisory to all persons over 65 years of age and to person with certain underlying conditions that place them at high risk of serious illness from COVID-19 to urge them to stay home and take measures to limit their exposure to COVID-10; and

WHEREAS, conditions presented by the threat of COVID-19 continue to pose a threat to the public health that requires dynamic emergency response, including the maintenance of existing orders, as well as the imposition of additional directives and orders as conditions require; and

WHEREAS, the Centers for Disease Control (CDC) advises that COVID-19 spreads mainly from person to person through respiratory droplets produced when an infected person coughs, sneezes, or talks; these droplets can land in the mouths or noses of people who are nearby or possibly be inhaled into the lungs; and studies and evidence on infection control report that these droplets usually travel around 6 feet (about two arms lengths); and

WHEREAS, the CDC advises that a significant portion of individuals with coronavirus lack symptoms (“asymptomatic”) and that even those who eventually develop symptoms (“pre-symptomatic”) can transmit the virus to others before showing symptoms. This means that the virus can spread between people interacting in close proximity—for example, speaking, coughing, or sneezing—even if those people are not exhibiting symptoms; and

WHEREAS, the CDC recommends wearing cloth face coverings in public settings where other social distancing measures are difficult to maintain in order 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; and

WHEREAS, the CDC does not recommend wearing cloth face covering for children under the age of 2, or anyone who has trouble breathing, or is unconscious, incapacitated or otherwise unable to remove the mask without assistance; and

WHEREAS, the CDC recommends only simple cloth face coverings for the general population and not surgical masks or N-95 respirators because these are critical supplies that must continue to be reserved for healthcare workers and other medical first responders; and

WHEREAS, cloth face coverings are relatively inexpensive and readily available as the CDC states they can be made from household items and provides online guidance for making “do-it-yourself” coverings for people that cannot or do not want to buy one from the increasing sources producing and selling coverings; and

WHEREAS, an increasing number of state and local governments throughout the United States are requiring facial coverings to be worn in public; and

WHEREAS, the State of Florida has not preempted local governments from regulating in the field of minimum health requirements with respect to COVID19; and

WHEREAS, 28 C.F.R. 36.208, the implementing regulations for the Americans with Disabilities Act states that the ADA “does not require a public accommodation to permit an individual to participate in or benefit from the goods, services, facilities, privileges, advantages and accommodations of that public accommodation when that individual poses a direct threat to the health or safety of others; and

WHEREAS, the Third District Court of Appeal has defined the term business establishment for purposes of tort liability to mean “a location where business is conducted, goods are made or stored or processed or where services are rendered.” *Publix Supermarkets, Inc. v. Santos*, 118 So.3d 317 (Fla. 3d DCA 2013); and

WHEREAS, the Florida Legislature has defined the term “transient public lodging establishment” to mean “any unit, group of units, swelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for a period of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.” *See*, F.S. 509.013(4)(a)1.

WHEREAS, on June 17, 2020, the Board of County Commissioners adopted an ordinance temporarily requiring people to where face coverings when inside of business establishments, as that term was defined in the ordinance; and

WHEREAS, the number of infections has increased dramatically since the mask ordinance was adopted; and

WHEREAS, the County's Emergency Management Director's interim rules are enforceable as misdemeanors by law enforcement through F.S. 252.47 and F.S. 252.50; and

WHEREAS, on June 25, 2020, the Florida Supreme Court concluded that a pandemic is a "natural emergency" within the meaning of F.S. 252.34(8) and thus the government may enact emergency orders pursuant to the State Emergency Management Act, *see, Abramson v. DeSantis*, SC20-646; and

WHEREAS, F.S. 252.46(2) authorizes local governments to issue orders for emergency management purposes; and

WHEREAS, the Board of County Commissioners has enacted Section 11-3 of the Monroe County Code, which delegates emergency management authority to the Emergency Management Director; and

WHEREAS, this rule is adopted pursuant to the authority set forth in F.S. 252.46(2) and Section 11-3 of the Monroe County Code.

NOW THEREFORE IT IS ORDERED THAT:

SECTION 1. Definitions. For purposes of this Directive, the following terms are defined as follows:

- (1) **Face Covering.** A "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.
- (2) **Business establishment.** A "business establishment" means any location where any business is conducted, goods are made or stored or processed or where services are rendered. The term "business establishment" also include locations where non-profit, governmental, and quasi-governmental entities facilitate public interactions and conduct business. The definition shall include the entire premises of the business establishment, whether owned or leased, regardless of whether indoors or outdoors.
- (3) **Lodging establishment.** A "lodging establishment" shall have the same meaning as the term "transient public lodging establishment" has in F.S. 509.013(4)(a)1 (2019). A lodging establishment is a specific type of business establishment.
- (4) **Operator.** An "operator" shall mean any individual or entity that owns a business or controls the operation of the business, even if only for a period of time, regardless of the formal title or role health by that individual.
- (5) **Social Distancing.** "Social distancing" shall mean keeping space between yourself and other persons by staying a minimum of six (6) feet away from another person.

SECTION 2. Mandatory Requirements

- (1) Every person over the age of six (6) who is away from his or her residence shall wear a face covering when not able to engage in social distancing.
- (2) Every person over the age of six (6) who is away from his or her residence shall carry a face covering capable of immediate use.
- (3) Every operator, employee, customer or patron of a business establishment must wear a face covering while at that business establishment unless able to engage in social distancing.
- (4) The operator and employees of a business or lodging establishment shall ensure that every individual in that establishment complies with this section.

SECTION 3. Exceptions. Paragraphs (1) and (3) of Section 2 of this directive shall not apply to:

- a. Restaurant and bar customers or patrons while dining and/or consuming beverages *while* seated.
- b. A gym patron engaged in a workout or class when able to engage in social distancing with the next closest person.
- c. Barbershop or beauty salon customers or patrons when wearing a face covering would reasonably interfere with receiving services.
- d. A lodging establishment guest when inside of the lodging unit including but not limited to a hotel room, motel room, vacation rental unit, timeshare unit, or similar unit.
- e. Any person who is under six (6) years of age, or is unconscious, incapacitated or otherwise unable to remove the mask without assistance.
- f. Public safety, fire, law enforcement, and other life safety personnel, as their personal protective equipment requirements will be governed by their respective agencies.

SECTION 4. ADA ACCOMODATION. When a customer of a business establishment asserts that he or she has a disability that prevents the individual from wearing a mask, the owner, manager, or employee of the business establishment may exclude the individual, even if they have a disability, as they pose a direct threat to the health and safety of employees and other customers, even if asymptomatic, and shall accommodate the disabled individual in a manner that does not fundamentally alter the operations of the business establishment nor jeopardize the health of that business's employees and other customers, such as providing curb service or delivery or other reasonable accommodation.


SECTION 5. Severability. Any provision(s) within this Emergency Directive that conflict(s) with any State or Federal law or constitution provision, or conflict(s) with or are superseded by a current or subsequently-issued Executive Order of the Governor or the President of the United States, shall be deemed inapplicable and deemed to be severed from this Emergency Directive, with the remainder of the Emergency Directive remaining intact and in full force and effect.

SECTION 6. Effective Date. This directive shall take effect upon filing with the Clerk pursuant to F.S. 252.46(2) and shall remain in effect until rescinded by subsequent order.

SECTION 7. Applicability. This directive shall apply countywide except within a municipality that has adopted a stricter measure.

SECTION 8. Enforcement. Violations of this order may be investigated by the code compliance department for the local government with jurisdiction over the location of the property. Enforcement action may be taken by any state or local law enforcement officer including State Attorney investigators. Violations of this order may be prosecuted by pursuant to F.S. 252.50 with a maximum penalty of up to 60 days in jail and a maximum of \$500 fine per occurrence. Each violation shall constitute a separate occurrence.

Dated this 26th day of June, 2020 at 4:00 pm.

Signed: 

Shannon Weiner, Emergency Management Director

Approved as to form and legal sufficiency by:

Robert B. Shillinger, Jr.
Robert B. Shillinger
Monroe County Attorney