



Public Health Department of Mendocino County

Healthy People, Healthy Communities

Andy Coren, MD, County Health Officer



GUIDANCE FOR LOCAL BUSINESSES ON STATE AND LOCAL INDOOR MASKING ORDERS

We are aware that there are documents circulating which purport that business policies following the Masking Orders (local and statewide) violate “several federal laws.” These documents rely on incomplete citations to various ADA regulations without proper explanation or context. The County Health Officer offers this document as a tool to help local businesses and the community understand the basis of the orders and to clarify the legal authority for mask mandates in this pandemic.

Why do we have local and statewide mask mandates?

Scientific studies summarized by the Centers for Disease Control (CDC) confirm the use of masks helps to prevent transmission of SARS-CoV-2, the virus which causes COVID-19, by controlling the source of COVID-19 (the release of virus-laden droplets) and protecting the wearer.ⁱ Universal masking is proven to decrease infection rates and slow community transmission. Mendocino County renewed its indoor mask mandate (regardless of vaccination status) as a protective measure to help slow the spread of COVID-19 in October, 2021, due to increased local case infections especially among the unvaccinated.ⁱ On December 15, 2021, the State of California Department of Public Health updated its directives to also require universal masking indoors irrespective of vaccination status, as the State has seen a significant increase in cases and hospitalizations since Thanksgiving and now prepares for the new Omicron variant.ⁱ

What is the authority of the County Health Officer and State Health Officer to issue mask mandates when responding to a deadly communicable disease, such as COVID-19?

The Local Health Officer (and County Public Health department) is a local public health authority, mandated by state law and regulations to control the spread and surveillance of communicable diseases in the County.ⁱⁱ Among those duties are to take whatever steps deemed necessary to prevent the spread of communicable disease or occurrence of additional cases.ⁱⁱⁱ One of the methods used to control the spread of communicable disease is the issuance of Health Orders by the Local Health Officer and State Health Officer and Governor Newsom’s Executive Orders.^{iv}

What are the mask wearing rules?

Everyone 2 years of age and older must wear a mask in all indoor public settings regardless of their vaccination status. Children younger than 2, people with certain medical or mental health conditions or disabilities that prevent them from wearing mask, and people for whom wearing a mask would create a risk related to their work are exempt. In addition, there are exceptions to masking when persons: are actively eating or drinking; working alone in a closed office or room; while swimming or showering in a fitness facility; while receiving care or other service involving the head or face; or while actively performing or engaging in public speaking at a public indoor event such as religious services, concerts, or theater provided that the event operator has verified that all persons at the event are fully vaccinated, performers maintain at least 12 feet from the audience and 6 feet from other performers and attendees and workers remain masked while at the event.

What can I do when someone comes into my business without a mask?

The Mendocino County Health Officer's Order requires every business to inform its visitors that they are required to wear masks by **prominently displaying signage** prior to entry explaining the mask requirements for all individuals to wear a mask. Businesses are permitted to refuse service or entry to any person who fails to wear a mask unless some other law specifically requires service to a customer without a mask. (See below regarding persons with disabilities). Although masking opponents have asserted that "federal law" prohibits local masking mandates, the County is unaware of any federal agency or court that has agreed with that assertion. Businesses are encouraged to review the latest COVID-19 information from Federal and State agencies cited below.^v

What are the legal consequences for the failure to comply with Health Officer's Orders?

The failure to comply with the local or State Health Officers' orders may constitute a public offense and may be enforced through criminal or civil enforcement.^{vi} Additionally, Governor Newsom's Executive Orders governing this emergency require compliance with all State and local public health orders, and violation of such Executive Orders constitutes a misdemeanor.^{vii} Law enforcement officers are authorized to execute and enforce State and local health officer orders.^{viii} Additionally, the County's urgency ordinance pertaining to the COVID-19 pandemic, (Ordinance No. 4461) may be enforced for violations of the local Health Officer's orders by misdemeanor, public nuisance or civil penalty against individuals and businesses in the unincorporated areas of the county.

If a person has a disability that prevents them from wearing a face mask do I still have to allow them in my business?

The ADA and its regulations issued by the U.S. Department of Justice, do not specifically address the required use of face masks by public health authorities. However, Syracuse University's "The ADA and Face Mask Policies" opines that if a person with a disability is not able to wear a face mask, businesses must consider "reasonable modifications" so that the person with the disability can participate in or benefit from the programs offered or goods or services that are provided, unless the business can demonstrate that making the modifications would fundamentally alter the nature of the programs offered or goods or services that are provided.^{ix} As reported in "The ADA and Face Mask Policies," some examples of "reasonable modifications" to a face mask policy may include:

- Allowing a person to wear a scarf or loose face covering over the mouth or nose, or a full face shield instead of a face mask.
- Allowing customers to order goods online or by telephone with curbside pick-up or no contact delivery in a timely manner.
- Allowing a person to wait in a car for an appointment (for certain services) and to enter the building when called or texted, or offering appointments by telephone or video.

The County Health Officer considers these accommodations to be in compliance with local and state masking orders.

ⁱ <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/guidance-for-face-coverings.aspx>

ⁱⁱ California Health & Safety Code sections 120175; 17 California Code of Regulations 2500-2502

ⁱⁱⁱ California Health & Safety Code sections 101040, 120175

^{iv} Local Health Orders are issued pursuant to California Health and Safety Code Sections 101040, 101085, and 120175. State Health Officer Orders such as the recent universal masking mandate, are issued pursuant to Health & Safety Code sections 120125, 120140, 120175, 120195 and 131080. Executive Orders, N-25-20 and N-60-20, were issued pursuant to the Emergency Services Act, California Government Code Section 8550 *et seq.*

^v Equal Employment Opportunity Commission: <https://www.eeoc.gov/coronavirus>; California's Department of Fair Employment and Housing: <https://www.dfeh.ca.gov/covid-19-resources-and-guidance/>; United States Department of Justice Civil Rights Division (www.ada.gov); Syracuse University's Burton Blatt Institute published technical assistance on the ADA which may be useful for businesses, including a discussion on "The ADA and Face Mask Policies" at <https://www.adasoutheast.org/ada/publications/legal/ada-and-face-mask-policies.php> Please note the statements and opinions published by these entities are their own, and do not constitute legal advice from the County of Mendocino.

^{vi} California Health & Safety Code sections 131082; 120175, 120295

^{vii} California Government Code section 8665

^{viii} California Government Code sections 41601 and 26602

^{ix} See also, "Modifications in policies, practices or procedures" 28 C.F.R. § 36.302