

ORDINANCE NO. 3618 C.S.

AN ORDINANCE OF THE COUNCIL OF THE CITY OF MONTEREY

**URGENCY ORDINANCE TO ADOPT THE CALIFORNIA DEPARTMENT OF PUBLIC
HEALTH'S GUIDANCE FOR THE USE OF FACE COVERINGS TO BE ENFORCEABLE BY
ADMINISTRATIVE CITATION WITHIN THE CITY OF MONTEREY**

THE COUNCIL OF THE CITY OF MONTEREY DOES ORDAIN as follows:

SECTION 1:

WHEREAS, Section 11-4(b) of the Monterey City Code empowers the Director of Emergency Services to proclaim the existence or threatened existence of a local emergency when the City is affected or likely to be affected by a public calamity and the City Council is not in session;

WHEREAS, MCC 11-4(b)(9) states that the Director of Emergency Services shall have the power during a proclaimed emergency to make and issue rules and regulations on matters reasonably related to the protection of life and property which are or may be affected by the emergency, including the temporary suspension of local ordinances and regulations, provided that such actions shall be confirmed at the earliest practical time by the City Council;

WHEREAS, on March 13, 2020, the City Manager as the Director of Emergency Services of the City of Monterey, proclaimed the existence of a local emergency based on the following: (1) on January 30, 2020, the World Health Organization declared the COVID-19 outbreak a public health emergency of international concern; (2) on January 31, 2020, the U.S. Department of Health and Human Services declared a Public Health Emergency in the United States; (3) the State of California proclaimed a state of emergency on March 4, 2020; and (4) the County of Monterey declared a local emergency on March 10, 2020;

WHEREAS, on March 17, 2020, the City Council adopted Resolution No. 20-033 and ratified said Proclamation;

WHEREAS, on March 19, 2020, the Governor of the State of California issued Executive Order N-33-20, ordering all individuals in the State of California to stay home or at their place of residence, except as outlined by the California Department of Public Health, during the COVID-19 pandemic for the preservation of public health and safety throughout California and to ensure that the healthcare delivery systems is capable of serving all, including those at higher risk and the most vulnerable. Executive Order N-33-20 requires all Californians to heed the state public health directives;

WHEREAS, the County of Monterey Health Officer, on March 17, 2020, ordered a shelter in place order that was amended on April 3, 2020, April 28, 2020, May 1, 2020, and May 8, 2020;

WHEREAS, the County of Monterey Health Officer on May 26, 2020 issued an amended order that was effective upon the posting by the California Department of Public Health on its website the County Health Officer's Attestation for a Variance through Stage 2 of the State's Roadmap to Pandemic Resilience;

WHEREAS, the May 26, 2020 order superseded the May 1, 2020 and May 8, 2020 Orders of the Health Officer and left the April 28, 2020 (facial coverings) and May 3, 2020 (short term lodging facilities) in effect;

WHEREAS, the County Health Officer's attestation for a variance was posted on May 30, 2020 and the County Health Officer's order dated May 26, 2020 became effective on May 30, 2020;

WHEREAS, a supplement to the May 26, 2020 order was issued on June 11, 2020, to rescind the short term lodging facilities order of May 3, 2020;

WHEREAS, the County and the State have issued orders relaxing restrictions and allowing restaurants, retail, and other businesses to reopen, with modifications and pursuant to COVID-19 Industry Guidance issued by the California Department of Public Health;

WHEREAS, according to the Monterey County Daily Situation Report dated June 30, 2020, there are 1,642 confirmed cases of COVID-19, 130 hospitalizations, 15 fatalities, 999 recovered, 5,646 contacts in the County, and a test positivity rate of 6.57%;

WHEREAS, according to Monterey County metric data as of June 29, 2020, the County exceeds recommend metrics to support accelerated reopening in: (1) the 14-day cumulative COVID-19 incidence per 100,000 population; (2) the percent of skilled nursing facilities with no new cases in the last 14 days; and (3) the 7-day average of daily percent change in total number of hospitalized COVID-19 patients;

WHEREAS, due to significant increases in COVID-19 cases, on June 28, 2020, Governor Newsom ordered bars that have opened in seven California counties to immediately close, and Monterey County Health Officer, Dr. Edward Moreno, says the County is "likely next" to see closure recommendations. (<https://kion546.com/news/2020/06/29/bars-ordered-to-close-in-parts-of-california-what-would-it-take-on-the-central-coast/>.) "We have exceeded the threshold [for bars to be closed] but not as long as other counties have," explains Dr. Moreno. (Id.);

WHEREAS, on June 18, 2020, the California Department of Public Health (CDPH) released Guidance for the Use of Face Coverings (Guidance), which was updated on June 29, 2020. According to the CDPH Guidance, "...we have learned a lot about COVID-19 transmission, most notably that people who are infected but are asymptomatic or pre-symptomatic play an important part in community spread. The use of face coverings by everyone can limit the release of infected droplets when talking, coughing, and/or sneezing, as well as reinforce physical distancing."

WHEREAS, "The CDC, CDPH, and MCHD now believe that wearing a face covering, when combined with physical distancing of at least 6 feet and frequent hand washing, may reduce the risk of transmitting coronavirus when in public...by reducing the spread of respiratory droplets." (Monterey County Health Officer Order dated April 28, 2020.);

WHEREAS, "Research shows masks can significantly mitigate the spread of the virus and UCSF professor and coronavirus expert Dr. Bob Wachter believes it's the "most important thing we can do right now." (<https://www.sfgate.com/bayarea/slideshow/Why-California-coronavirus-cases-going-up-204645.php>.)

WHEREAS, under California law, the state public health officer's orders are enforceable by local police agencies, and people who fail to comply may be charged with a misdemeanor;

WHEREAS, the City of Monterey has received numerous complaints from City residents that the public is not heeding the Guidance, and the number of infected persons in Monterey County is rapidly rising;

WHEREAS, Old Fisherman's Wharf (Wharf 1) is a crowded destination with a high number of people observed not wearing face coverings and not able to maintain six-foot social distancing from other individuals due to the narrow configuration of the wharf. The high volume of pedestrians on the wharf without wearing face coverings seriously impedes community efforts to stem the local transmission of COVID-19;

WHEREAS, Cannery Row, from Hoffman Avenue to David Avenue, is a crowded destination with a high number of people observed not wearing face coverings and not able to maintain six-foot social distancing from other individuals due to the congestion of people and width of the sidewalks. The high volume of pedestrians on Cannery Row between Hoffman Avenue and David Avenue without wearing face coverings seriously impedes community efforts to stem the local transmission of COVID-19;

WHEREAS, the intent of this urgency ordinance is to provide a tool, in addition to education, to compel compliance with the Guidance by authorizing enforcement of the Guidance through the issuance of administrative citations pursuant to Monterey City Code section 1-9 et seq.,

WHEREAS, it is the further intent of this urgency ordinance to create a presumption that persons are unable to maintain a distance of at least six feet away from persons who are not members of the same household or residence while on Old Fisherman's Wharf or on Cannery Row between Hoffman Avenue and David Avenue;

WHEREAS the City's Charter and Government Code section 36937 authorize an urgency ordinance to take effect immediately if the ordinance is for the immediate preservation of the public peace, health, or safety, containing a declaration of the facts constituting the urgency and if the ordinance is passed by a four-fifths (4/5) vote of the Council;

WHEREAS, an urgency ordinance that is effective immediately is necessary to avoid the immediate threat to public peace, health, and safety, as failure to adopt this urgency ordinance would impede efforts to stem the local transmission of COVID-19. The City has a compelling interest to stop the spread of this communicable disease, and authorizing an administrative enforcement tool for failure to comply with CDPH's Guidance is a narrowly tailored means of achieving that objective; and

The City of Monterey Planning Office determined the project is exempt from the California Environmental Quality Act Guidelines (Article 18, Section 15269.c) because the City is adopting an urgency ordinance related to COVID-19. Specific actions are needed to prevent or mitigate the spread of COVID-19 such as, but not limited to, administrative enforcement of face covering guidance. The actions proposed are immediate actions and are necessary to protect the health and safety of the City's citizens.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MONTEREY that it hereby declares, determines, and orders as follows:

SECTION 1: The recitals set forth above are incorporated herein as if fully set forth, are true and correct, and are adopted as findings of the City Council.

SECTION 2: The CDPH Guidance and exemptions, attached hereto as Exhibit A, and as may be amended from time to time, is hereby expressly acknowledged and declared to be enforceable within the City of Monterey as if directly enacted by the City. The failure to comply with the CDPH Guidance is a public nuisance.

SECTION 3. A rebuttable presumption is hereby established that it is not feasible for persons to maintain a distance of at least six feet away from persons who are not members of the same household or residence while on Old Fisherman's Wharf or on Cannery Row between Hoffman Avenue and David Avenue. This presumption may be rebutted by a preponderance of the evidence.

SECTION 4. Enforcement. Any person, as that term is defined in Monterey City Code section 1-2, who violates the Guidance is in violation of this urgency ordinance and is subject to administrative citations under City Code sections 1-9 through 1-9.12. The fine amount for the first violation is \$100, the second violation is \$150, and the third violation is \$200.

SECTION 5. Severability. If any section, subsection, clause or phrase of this urgency ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portion or sections of the ordinance. The Council hereby declares that it should have adopted the ordinance and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION 6. This ordinance shall be effective immediately upon adoption. This ordinance shall sunset when the Guidelines are terminated by the CDPH or by the City Council, whichever occurs first. Upon adoption, this ordinance supersedes/terminates the Order of the Director of Emergency Services dated June 29, 2020.

SECTION 7: All ordinances and parts of ordinances in conflict herewith are hereby repealed.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF MONTEREY this 7th day of July 2020 by the following vote:

AYES:	5	COUNCILMEMBERS:	Albert, Haffa, Smith, Williamson, Roberson
NOES:	0	COUNCILMEMBERS:	None
ABSENT:	0	COUNCILMEMBERS:	None
ABSTAIN:	0	COUNCILMEMBERS:	None

APPROVED:

ATTEST:

DocuSigned by:
 *CBrown*
ED8453A4F62C4AA...

City Clerk thereof

DocuSigned by:
Mayor Clyde Roberson
FA1981217DEE4FB...

Mayor of said City



SONIA Y. ANGELL, MD, MPH
State Public Health Officer & Director

State of California—Health and Human Services Agency California Department of Public Health

EXHIBIT A



GAVIN NEWSOM
Governor

Released June 18, 2020

- Revised on June 29, 2020 to clarify that children under two years old are exempt from wearing face coverings due to risk of suffocation

GUIDANCE FOR THE USE OF FACE COVERINGS

Because of our collective actions, California has limited the spread of COVID-19 and associated hospitalizations and deaths in our state. Still, the risk for COVID-19 remains and the increasing number of Californians who are leaving their homes for work and other needs, increases the risk for COVID-19 exposure and infection.

Over the last four months, we have learned a lot about COVID-19 transmission, most notably that people who are infected but are asymptomatic or pre-symptomatic play an important part in community spread. The use of face coverings by everyone can limit the release of infected droplets when talking, coughing, and/or sneezing, as well as reinforce physical distancing.

This document updates existing [CDPH guidance](#) for the use of cloth face coverings by the general public when outside the home. It mandates that face coverings be worn state-wide in the circumstances and with the exceptions outlined below. It does not substitute for existing guidance about social distancing and handwashing.

Guidance

People in California must wear face coverings when they are in the high-risk situations listed below:

- Inside of, or in line to enter, any indoor public space;¹
- Obtaining services from the healthcare sector in settings including, but not limited to, a hospital, pharmacy, medical clinic, laboratory, physician or dental office, veterinary clinic, or blood bank;²
- Waiting for or riding on public transportation or paratransit or while in a taxi, private car service, or ride-sharing vehicle;
- Engaged in work, whether at the workplace or performing work off-site, when:
 - Interacting in-person with any member of the public;
 - Working in any space visited by members of the public, regardless of whether anyone from the public is present at the time;

¹ Unless exempted by state guidelines for specific public settings

² Unless directed otherwise by an employee or healthcare provider



- Working in any space where food is prepared or packaged for sale or distribution to others;
- Working in or walking through common areas, such as hallways, stairways, elevators, and parking facilities;
- In any room or enclosed area where other people (except for members of the person's own household or residence) are present when unable to physically distance.
- Driving or operating any public transportation or paratransit vehicle, taxi, or private car service or ride-sharing vehicle when passengers are present. When no passengers are present, face coverings are strongly recommended.
- While outdoors in public spaces when maintaining a physical distance of 6 feet from persons who are not members of the same household or residence is not feasible.

The following individuals are exempt from wearing a face covering:

- Persons younger than two years old. These very young children must not wear a face covering because of the risk of suffocation.
- Persons with a medical condition, mental health condition, or disability that prevents wearing a face covering. This includes persons with a medical condition for whom wearing a face covering could obstruct breathing or who are unconscious, incapacitated, or otherwise unable to remove a face covering without assistance.
- Persons who are hearing impaired, or communicating with a person who is hearing impaired, where the ability to see the mouth is essential for communication.
- Persons for whom wearing a face covering would create a risk to the person related to their work, as determined by local, state, or federal regulators or workplace safety guidelines.
- Persons who are obtaining a service involving the nose or face for which temporary removal of the face covering is necessary to perform the service.
- Persons who are seated at a restaurant or other establishment that offers food or beverage service, while they are eating or drinking, provided that they are able to maintain a distance of at least six feet away from persons who are not members of the same household or residence.
- Persons who are engaged in outdoor work or recreation such as swimming, walking, hiking, bicycling, or running, when alone or with household members, and when they are able to maintain a distance of at least six feet from others.

- Persons who are incarcerated. Prisons and jails, as part of their mitigation plans, will have specific guidance on the wearing of face coverings or masks for both inmates and staff.

Note: Persons exempted from wearing a face covering due to a medical condition who are employed in a job involving regular contact with others should wear a non-restrictive alternative, such as a face shield with a drape on the bottom edge, as long as their condition permits it.

Background

What is a cloth face covering?

A cloth 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 such as scarfs, T-shirts, sweatshirts, or towels.

How well do cloth face coverings work to prevent spread of COVID-19?

There is scientific evidence to suggest that use of cloth face coverings by the public during a pandemic could help reduce disease transmission. Their primary role is to reduce the release of infectious particles into the air when someone speaks, coughs, or sneezes, including someone who has COVID-19 but feels well. Cloth face coverings are not a substitute for physical distancing, washing hands, and staying home when ill, but they may be helpful when combined with these primary interventions.

When should I wear a cloth face covering?

You should wear face coverings when in public places, particularly when those locations are indoors or in other areas where physical distancing is not possible

How should I care for a cloth face covering?

It's a good idea to wash your cloth face covering frequently, ideally after each use, or at least daily. Have a bag or bin to keep cloth face coverings in until they can be laundered with detergent and hot water and dried on a hot cycle. If you must re-wear your cloth face covering before washing, wash your hands immediately after putting it back on and avoid touching your face. Discard cloth face coverings that:

- No longer cover the nose and mouth
- Have stretched out or damaged ties or straps
- Cannot stay on the face
- Have holes or tears in the fabric