



# Council Agenda Report

To: Mayor Pierson and the Honorable Members of the City Council

Prepared by: Nathalie Camarena, Deputy City Attorney

Approved by: Reva Feldman, City Manager

Date prepared: August 28, 2020 Meeting date: September 14, 2020

Subject: Face Covering Ordinance

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**RECOMMENDED ACTION:** Adopt Ordinance No. 470U requiring all individuals to wear a face covering while in public, finding the same exempt from the California Environmental Quality Act and setting forth the facts constituting such urgency; a four-fifths vote of the City Council is required and, if approved, it will take effect immediately.

**FISCAL IMPACT:** There is no fiscal impact associated with the recommended action

**WORK PLAN:** This item was not included in the Adopted Work Plan for Fiscal year 2019-2020. This project is part of emergency staff operations.

**BACKGROUND:** On March 4, 2020, California Governor Gavin Newsom declared a State of Emergency in response to the increased spread of COVID-19. Additionally, on March 4, 2020, the Los Angeles County Board of Supervisors and the Department of Public Health all declared a local and public health emergency in response to increased spread of COVID-19 across the country and in Los Angeles County. The President of the United States declared a major disaster for California for the COVID-19 pandemic on March 22, 2020.

The City activated its Emergency Operations Center on March 12, 2020. The City's Director of Emergency Services, in accordance with Malibu Municipal Code Section 2.52.060, proclaimed the existence of a local emergency on March 14, 2020. On March 16, the City Council adopted Resolution No. 20-14 ratifying the Director's Proclamation of Existence of a Local Emergency issued on March 14, 2020. The resolution established the powers, functions, and duties of the Director of Emergency Services shall be those prescribed by State law and by the ordinances and resolutions of the City.

On March 19, 2020, the Governor issued Executive Order N-33-20 ordering all residents of California to stay home except as needed to maintain the operations of critical infrastructure sectors.

The Los Angeles County Health Officer issued a series of orders that mirrored and expanded on this Order. The City is subject to the orders of the County Health Official.

On April 14, 2020, the State presented its Resilience Roadmap, a four-stage plan for modifying the State Public Health Officer's stay-at-home order.

On May 4, 2020, the Governor issued Executive Order N-60-20 which informed local health jurisdictions and industry sectors that they may gradually reopen under new modifications and guidance provided by the state per the May 7, 2020 Public Health Order.

The May 7, 2020 Public Health Order described an attestation opportunity for counties to move through Stage 2, opening additional sectors of their economy at their own pace. To qualify, counties must attest that hospitalization and test positivity rates are stable or declining; that they have a significant level of preparedness with testing, contact tracing, PPE and hospital surge; and that they have adequate plans related to county-wide containment. Allowing this initial approach to move forward for approximately 10-14 days allowed the state and counties to see the early impact of these modifications to the statewide Stay-at-Home order. To date, one county has retracted their attestation for one week following an increase in new cases.

On May 18, 2020, State public health leaders announced a new attestation process, which includes criteria important for larger, more densely populated counties such as the County of Los Angeles. To qualify, counties must attest that hospitalization and test positivity rates are stable or declining; that they have a significant level of preparedness with testing, contact tracing, PPE and hospital surge; and that they have adequate plans related to county-wide containment.

The County of Los Angeles has also established a roadmap to recovery from the coronavirus pandemic which includes a phased approach for the safe reopening of Los Angeles County. On May 26, 2020, as part of this phased reopening strategy, the County of Los Angeles issued a new Health Order easing restrictions on certain activities including in-person faith-based services and retail shopping with certain safety protocols including capacity limitations while continuing to encourage all County residents to remain in their residences whenever practicable and for people 65 years old or older and anyone with underlying health conditions to remain in their residences as much as possible, leaving their residences only when necessary to seek medical care, exercise, or obtain food or other necessities.

On May 29, 2020, the State approved the County's application to move into advanced Stage 2, which allows for the reopening of retail stores and in-person dining with limited seating capacity and social distancing.

On June 18, 2020, Governor Newsom along with the State Health Officer released mandatory health guidance that requires Californians, subject to limited exceptions to wear face coverings when outside the home. In line with the mandatory guidance, the County Health Officer issued a revised Order on the same date to require all persons to wear a face covering over both the nose and mouth whenever they leave their place of residence and are or can be in contact with or walking near or past others who are non-household members in both public and private places whether indoors or outdoors. According to State and County Health Officials, wearing face coverings reduces the risk of transmission to others who do not have symptoms and do not know that they're infected.

However, on June 28, 2020, due to a spike in COVID-19 cases and hospitalizations, the State and the County amended the previous orders to require that all bars, breweries, wineries and tasting rooms close if they offered dine-in, sit-down meals.

In addition to the amended Order that closed bars and breweries, the County issued orders to close all beaches, beach parking lots, bike paths, piers, and access ways countywide, effective Friday, July 3, 2020, through Monday, July 6, 2020, to prevent crowding over the holiday and slow the spread of COVID-19. Surfing, walking, jogging, kayaking, paddle-boarding or any other recreational activities or gatherings were also prohibited at any State or County beach.

On July 1, 2020, the County backtracked even further closing indoor dining, indoor museums, zoos and aquariums, and card rooms. On July 13, 2020, the Governor announced that counties on the State's Monitoring List for three consecutive days, which includes Los Angeles County, must also close indoor operations at fitness centers, places of worship, indoor protests, offices for non-critical infrastructure sectors, personal care services, hair salons and barbershops, and malls, unless they can be modified to operate outside or by pick-up.

As of August 31, these sectors have still not fully reopened. As key indicators including the rate of hospitalizations and deaths have shown declines in Los Angeles County, public health officials are cautiously optimistic that additional sectors will be eligible for reopening in the near future.

As the County prepares to reopen additional sectors, face covering regulations as proposed can help to reduce the likelihood of community spread within Malibu and additional public health orders along with other efforts.

## DISCUSSION:

In light of the foregoing, on August 10, 2020, the City Council reviewed the face covering order implemented by the City of West Hollywood effective May 23 and the face covering ordinance considered by the City of Hermosa Beach on July 28. After consideration, Council directed staff to bring back an urgency ordinance requiring all individuals to wear a face covering while in public similar to the City of Hermosa Beach ordinance.

### *How the Use of Face Coverings Can Help Curb the Spread of the Disease*

Face Coverings have been recognized as a critical tool in the fight against COVID-19. The use of face coverings is commonly referred to as “source control”. Source control means preventing the transmission of infection through a person’s respiratory droplets with are produced when a person speaks, coughs, or sneezes. According to Federal, State and County Health officials, COVID-19 may be spread through respiratory droplets by individuals who may or may not have symptoms of COVID-19. Wearing face coverings help with source control by covering the wearers’ nose and mouth, thereby reducing the risk of transmission to others who do not have symptoms and do not know that they’re infected.

Recommendations issued by the Center for Disease Control (“CDC”) also reaffirm the importance of using face coverings in reducing the community spread of COVID-19. According to the CDC, laboratory studies demonstrate that cloth face coverings reduce the spray of respiratory droplets that spread the virus. COVID-19 spreads mainly among people who are in close contact with one another (within about 6 feet) so the use of cloth face coverings is particularly important in settings where people are close to each other or where social distancing is difficult to maintain.

### *State and County Face Covering Requirements*

On June 18, 2020, Governor Newsom along with the State Health Officer released mandatory health guidance that requires Californians, subject to limited exceptions, wear face coverings when outside the home. There is no state-wide fine for not wearing face coverings.

In line with the mandatory guidance, the Los Angeles County Health Officer issued a revised order on the same date to require all persons to wear a face covering over both the nose and mouth whenever they leave their place of residence and are or can be in contact with or walking near or past others who are non-household members in both public and private places whether indoors or outdoors. The County’s order applies to City residents. Here are some characteristics of the County Order:

- Face coverings must be worn when patronizing a business.
- Acceptable forms of face coverings include: bandanas, neck gaiter, homemade face covering, scarf, tightly woven fabric such as a cotton t-shirt and some type of towels.
- Purchasing N95 respirators and surgical masks are strongly discouraged because they are intended for health workers in the healthcare setting. Masks with a one-way valve are prohibited.
- Individuals exempted from wearing face coverings:
  - Children under the age of 2;
  - Those between the age of 2 and 8 should use them but under adult supervision to ensure that the child can breathe safely and avoid choking or suffocation;
  - Children with breathing problems;
  - Anyone who is unconscious;
  - Individuals who have trouble breathing or are unable to remove their face covering without assistance;
  - Individuals instructed by a medical provider not to wear one;
  - Due to a medical condition; and
  - Individuals who are employed in a job involving regular contact with others must wear a nonrestrictive alternative such as a face shield with a drape on the bottom edge as long as their medical condition permits it.

### *Enforcement of the County Face Covering Requirements*

While the County's face covering requirement is enforceable by the County Sheriff and chiefs of police in all cities, the County's primary form of community compliance seems to be through education, and the cooperation of establishments that have been permitted to reopen subject to social distancing measures in their reopening protocol, which in most cases, mandates the use of face coverings.

According to a press release issued by the County Public Health Department in late July, the County announced that in light of the numerous reported cases of noncompliance with the County's various Health Officer Orders, including its face covering provisions, it will start fining violators in late August.<sup>1</sup> It is not uncommon for California counties to have adopted face covering requirements that have not been enforced by penalties. Here is a chart summarizing the fine mask fines by County and their respective fines:<sup>2</sup>

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<sup>1</sup> Public Health Unveils Compliance Plan to Enforce Health Officer Orders, Los Angeles County Department of Public Health (July 23, 2020) available here: <http://publichealth.lacounty.gov/phcommon/public/media/mediapubdetail.cfm?unit=media&ou=ph&prog=media&cur=cur&prid=2527&row=25&start=1>.

<sup>2</sup> Ostrov, Barbra F, *Mask fines vary widely throughout California*, CAL MATTERS (Au. 17, 2020) available here: <https://calmatters.org/health/2020/08/california-mask-order-fines/>.

COUNTY	INDIVIDUAL FINE	BUSINESS FINE
Los Angeles	None	\$100-\$500
San Diego	Unspecified	None
Orange	None	None
San Bernardino	None	None
Santa Clara	\$25-\$50	\$250-\$5,000
Alameda	Unspecified	None
Sacramento	None	None
Contra Costa	\$100-\$500	\$250-\$1,000

Local Face Covering Regulations

A growing number of Southern California cities such as Beverly Hills, Calabasas, Los Angeles, West Hollywood, Hermosa Beach and Manhattan Beach have adopted local face covering requirements. Here is a brief synopsis of each of these cities' face covering order:

- Beverly Hills: Subject to specified exemptions, all persons are required to wear face coverings that cover their mouth and nose when they leave their homes or places of residence for essential activities, such as taking a walk through their neighborhood, if that person has potential to come within six feet of another person not a member of their household. Face Coverings such as scarves (dense fabric, without holes), bandanas, neck gaiters, or other fabric face coverings are permitted. It incorporates the City's administrative citation authority to enforce its face covering requirements. The fees for noncompliance are: \$100 for the first violation, \$200 for the second violation and \$500 for the third and subsequent offenses.
- Calabasas: Subject to specified exemptions, all persons including essential workers and persons shopping at other essential business or services are required to wear a face covering while outside of their places of residence for any reason, including traveling to or from an essential businesses or service. Persons walking or exercising outdoors in a manner in which a 6 feet physical distance is maintained from any person nor part of the same household do not have to wear face coverings but must carry a face covering and wear it when they encounter a person who is not part of the same household. It incorporates the City's administrative citation penalties to enforce its face covering requirements. Persons not wearing masks will be fined \$100.
- Hermosa Beach: The contents of this order is discussed in Option 2. It incorporates the City's administrative citation authority to enforce its face covering requirements. The fees for noncompliance are: \$100 for the first violation, second violation is \$200

and the third and each subsequent violation is \$500 for each subsequent violation within a 12-month period.

- Los Angeles: Subject to specified exemptions, all persons are required to wear a face covering whenever there is or can be contact with others who are non-household members in both public and private places.
- Manhattan Beach: Subject to specified exemptions, all persons are required to wear a face covering over both the nose and mouth whenever they leave their place of residence. Persons who are seated at a restaurant or food establishment are also required to wear a face covering over both the nose and mouth unless they are eating or drinking. It incorporates the City's administrative citation authority to enforce its face covering requirements. The fees for noncompliance are: \$100 for first violation, \$200 for second violation and \$350 for each subsequent violation.
- West Hollywood: Subject to specified exceptions, all persons, including essential workers are required to wear face coverings when out in public and away from their residence. It incorporates the City's administrative citation authority to enforce its face covering requirements. The fees for noncompliance are: \$250 for the first violation, \$1,000 for a second violation, \$2,000 for the third violation and \$5,000 for the fourth violation. A \$50 fee is added to each violation.

Adopting local regulations governing the use of face coverings will permit the City to adopt more stringent requirements and set its own fees for non-compliance.

The proposed ordinance (Attachment 1) requires all persons to wear a face covering over both the nose and mouth whenever they leave their place of residence with certain exceptions based on age, medical directives, the need to communicate with persons who are hearing impaired, participation in water-based activities, and occupations that require close contact with people who are ill.

Violations of the ordinance shall be subject to a fine of \$50 per violation and individuals shall be issued a warning and given an opportunity to immediately comply with the requirements of this ordinance before a citation is issued.

ATTACHMENTS: Ordinance No. 470U

ORDINANCE NO. 470U

AN URGENCY ORDINANCE OF THE CITY OF MALIBU TO REQUIRE MEMBERS OF THE PUBLIC TO WEAR A FACE COVERING DURING THE COVID-19 PANDEMIC, FINDING THE SAME EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND SETTING FORTH THE FACTS CONSTITUTING SUCH URGENCY

The City Council of the Malibu does ordain as follows:

SECTION 1. Purpose and Findings.

- A. International, national, state, and local health and governmental authorities are responding to an outbreak of respiratory disease caused by a novel coronavirus named “SARS-CoV-2,” and the disease it causes has been named “coronavirus disease 2019,” abbreviated COVID-19, (“COVID-19”).
- B. On March 4, 2020, the Los Angeles County Board of Supervisors and Department of Public Health declared a local emergency and local public health emergency to aid the regional healthcare and governmental community in responding to COVID-19.
- C. On March 4, 2020, the Governor of the State of California declared a state of emergency to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and help the state prepare for the spread of COVID-19.
- D. On March 14, 2020, the City Manager/Director of Emergency Services proclaimed the existence of a local emergency pursuant to Malibu Municipal Code section 2.52.060. At a special meeting on March 16, 2020, the City Council ratified the proclamation of the Director of Emergency Services and declared the existence of a local emergency to ensure the availability of mutual aid and aid the City’s response to COVID-19.
- E. On March 19, 2020, Governor Newsom issued Executive Order N-33-20, a state-wide “Stay at Home Order”, which ordered all individuals living in the State to stay home or at their place of residence, except as needed to maintain continuity of operations of the federal critical infrastructure sectors.
- F. The Los Angeles County Health Officer issued a series of orders that mirrored and expanded on the State’s Stay at Home Order, including on March 21, 2020, that (1) prohibit all public and private group events and gatherings, (2) orders all persons to remain in their homes except to travel to and from Essential Businesses, to work at a Healthcare Operation or Essential Infrastructure, to engage in Essential Activities, or to participate in an individual or family outdoor activity, while practicing social distancing. All of the following were ordered closed immediately: (1) Non-Essential Retail Businesses, (2) Indoor Malls and Shopping Centers

(including both Essential and Non-Essential Businesses within, except Essential Businesses that can be accessed from the exterior of the building), (3) Indoor and Outdoor Playgrounds, Flea Markets and Swap Meets, and (4) bars and nightclubs that do not serve food, gyms and fitness centers, movie theaters, live performance theaters, concert halls, arenas, stadiums, bowling alleys, arcades, and wineries, breweries, and tap rooms that provide tastings. On-site dining was prohibited at restaurants and other food facilities. The City is subject to the orders of the County Health Official.

- G. On April 14, 2020, Governor Newsom alongside the State Public Health Officer presented its “Resilience Roadmap”, a four-staged framework that is intended to guide the modification of its Stay-at Home Order and reopen California.
- H. In line with the State’s health guidance, the Los Angeles County Public Health Officer issued a revised order on May 13, 2020 entitled “Continuation of Safer at Home Order that begins to move the County of Los Angeles into Stage 2 of the County’s Roadmap to Recovery,” that authorized some limited retail and outdoor recreation venues to reopen subject to among other things, social distancing measures to prevent the further spread of COVID-19. The Order was updated again on May 26th, May 29th, June 11th and June 18th, 2020 to continue to allow the gradual reopening of additional sectors including bars, hair salons, personal care services, gyms and fitness facilities subject to social distancing measures.
- I. The May 29th Order for example, permitted restaurants and food facilities to remain open and offer limited dine-in seating. The Order also encouraged restaurants to expand outdoor seating where possible in compliance with local zoning codes to comply with social distancing requirements.
- J. To assist in the economic recovery of local businesses and restaurants, on June 8, 2020 the City adopted Urgency Ordinance No. 465U to establish a “Temporary Restaurant Recovery Permit” program to allow City restaurants to operate outdoors subject to requirements set forth therein and in accordance with State COVID-19 industry guidance and State Public Health and County Department of Public Health codes and requirements.
- K. On June 18, 2020, Governor Newsom along with the State Health Officer released mandatory health guidance that requires Californians, subject to limited exceptions to wear face coverings when outside the home. In line with the mandatory guidance, the County Health Officer issued a revised Order on the same date to require all persons to wear a face covering over both the nose and mouth whenever they leave their place of residence and are or can be in contact with or walking near or past others who are non-household members in both public and private places whether indoors or outdoors. According to State and County Health Officials, wearing face coverings reduces the risk of transmission to others who do not have symptoms and do not know that they’re infected.

- L. As additional business, recreation areas, and other industries gradually reopen, members of the public are likely to be in contact with persons who are not part of the same household. Federal and State health authorities report that the use of face coverings can help reduce the community transfer of the disease by reducing the release of infectious particles into the air when someone speaks, coughs, or sneezes, including someone who has COVID-19 but feels well. The use of face coverings is commonly referred to as “source control”.
- M. This Ordinance is intended to promote the health, safety and public welfare of City residents during the COVID-19 pandemic by requiring members of public to wear face coverings, thereby reducing the continued spread of the disease.
- N. In the interest of public health and safety, as affected by the emergency caused by the spread of COVID-19, it is necessary to exercise authority to adopt this ordinance related to the protection of life and property, to require members of the public to wear face coverings to help reduce the spread of the disease.
- O. This Ordinance is adopted pursuant to the City's police powers and powers afforded to the City in time of national, State, County and local emergency during an unprecedented health pandemic, such powers being afforded by the State Constitution, State law and Section 2.52 of the Malibu Municipal Code to protect the peace, health, and safety of the public. The Malibu City Council finds that this Ordinance is necessary for the preservation of the public peace, health, and safety of residents living within the City and financial stability of the local business community, and finds urgency to approve this ordinance immediately based on the facts described herein and detailed in the staff report. Under Government Code Section 8634, this Ordinance is necessary to provide for the protection of life and property.

SECTION 2. The following emergency measures are adopted:

- A. All persons shall wear a face covering over both the nose and mouth whenever they leave their place of residence, except for:
  - a. Persons younger than two years old;
  - b. Persons who have been instructed by a medical provider not to wear face covering due to a medical condition, mental health condition, or disability that prevents wearing a face covering;
  - c. 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;
  - d. Persons who are swimming or engaged in other water-based activities; and
  - e. Healthcare workers, first responders, and others whose work requires close contact with people who are ill.
- B. Use of face coverings by persons between the ages of two and eight shall be under

adult supervision to ensure that the child can breathe safely and avoid choking or suffocation.

- C. For purposes of this Ordinance, “face covering” shall mean: fabric coverings such as cloth masks, neck gaiter (only if it covers both the nose and mouth and is secured under the chin), scarves, bandanas, tightly woven fabric such as cotton t-shirt, and some types of towels that cover the nose and mouth.
  - a. A “face covering” does not include face shields without a mask underneath, open-chin triangle bandanas, masks with exhaust valves or vents and masks that have any openings.
- D. Persons who are seated at a restaurant or other establishment that offers food or beverage service shall wear a face covering over both the nose and mouth unless they are eating or drinking.
- E. In addition to all other enforcement remedies, violations of this ordinance are subject to the penalty provisions of Chapter 1.10 of the City of Malibu Municipal Code except that violations shall be subject to a fine of \$50 per violation and individuals shall be issued a warning and given an opportunity to immediately comply with the requirements of this ordinance before a citation is issued.

### SECTION 3. Severability.

If any section, subsection, sentence, clause, phrase or word of this Chapter is found to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such decision shall not affect the remaining provisions of this Ordinance.

### SECTION 4. Environmental Review.

The City Council finds that adoption and implementation of this ordinance is categorically exempt per Section 15304(e) of the CEQA guidelines regarding minor temporary uses of land. The City Council also alternatively finds that the adoption and implementation of this ordinance is exempt from the provisions of CEQA as an administrative activity by the City of Malibu, in furtherance of its police power, that will not result in any direct or indirect physical change in the environment, per sections 15061(b)(3), and 15378(b)(5) of the CEQA Guidelines, as well as CEQA Guidelines section 15064(e) (economic regulations). Further, the City Council finds that the adoption and implementation of this ordinance is categorically exempt per Section 15269 of the CEQA guidelines regarding emergency projects as this action is necessary to prevent or mitigate an emergency by allowing for greater social distancing to limit the spread of COVID-19.

### SECTION 5. Urgency Declaration; Effective Date.

The City Council finds and declares that the adoption and implementation of this Ordinance is necessary for the immediate preservation and protection of the public peace, health and safety as detailed above. The recent increase in confirmed cases and hospitalizations demonstrates how

easily and rapidly the disease can spread from person-to person. Requiring members of the public to wear face coverings while outside of their places of residence helps reduce the risk of community transfer of the disease. Under Government Code Section 8634 and Malibu Municipal Code Section 2.52, this ordinance is necessary to provide for the protection of life and property for the reasons set out herein. The Council therefore finds and determines that the immediate preservation of the public peace, health and safety, and protection of life and property, require that this Ordinance be enacted as an urgency ordinance pursuant to Government Code section 36937 and take effect immediately upon adoption by four-fifths of the City Council.

SECTION 6. Certification.

The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same, or the summary thereof, to be published or posted in the manner required by law.

PASSED, APPROVED AND ADOPTED this 14th day of September 2020.

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MIKKE PIERSON, Mayor

ATTEST:

\_\_\_\_\_  
HEATHER GLASER, City Clerk  
(seal)

Date: \_\_\_\_\_

APPROVED AS TO FORM:

THIS DOCUMENT HAS BEEN REVIEWED  
BY THE CITY ATTORNEY'S OFFICE  
\_\_\_\_\_  
CHRISTI HOGIN, City Attorney