



## **Guidance on Enforcing Face Covering Rules in Public Settings**

### **I. Background:**

- As the state and nation experience an increase in new cases of COVID-19, ensuring the safety of workers and customers at Maine businesses has never been more important.
- Wearing face coverings, according to the U.S. Centers for Disease Control, or “CDC” is among the most effective ways we can protect ourselves and protect others against this deadly disease.
- Wearing face coverings is also key to keeping our businesses open.

### **II. Executive Orders:**

- Because of their proven value, Governor Mills issued executive orders that require people in Maine to wear face coverings in certain circumstances.
- Maine law gives the Governor the authority to protect the public health during emergencies. This authority includes directing the movement of persons and the occupancy of premises within the State. These executive orders relating to face coverings fall within the Governor’s emergency powers and are enforceable through licensing actions, by the Attorney General, and by law enforcement. A person’s failure to comply with a just or reasonable order from a law enforcement order to comply with the executive orders relative to face coverings is a Class E crime, punishable by a fine of up to \$1000.00 and a jail term up to six months.

### **III. Individuals in Public Settings:**

- Under the executive orders, people in Maine must wear a face covering in public settings. Public settings include places like stores, restaurants, and municipal buildings.

- Public settings do not include private homes, trails in the woods where people are unlikely to encounter others, and other places where the risk of encountering someone else is low.
- The Governor has asked people to use their common sense in complying with the face covering requirement. The State has no interest in taking action against people for honest mistakes or minor violations. But if you have any doubt about whether you should be wearing a face covering, err on the side of caution. Remember: “If you have to ask, wear a mask.”

The requirement applies to individuals. Although it has not yet occurred in Maine, a person may be charged with a criminal offense for not wearing a face covering in a public setting after being warned by a law enforcement officer to do so. Once told to do so, most people comply.

- There are limited exceptions. This includes individuals who have a disability which prevents them from wearing a face covering. In those instances, the requirements of state and federal disabilities laws must be followed.

#### **IV. Enforcement by Establishments:**

- The Governor’s executive orders require all public settings to post the face covering requirement.
- All businesses may, but some businesses must, enforce the wearing of face coverings by customers. This means that a business is accountable for only allowing customers with face coverings to enter and stay in the public setting.
  - Businesses that are required to implement measures to ensure customers and employees wear face coverings in publicly accessible areas include retail stores with over 50,000 square feet of shopping space, eating establishments, bars, tasting rooms, social clubs, and lodging.
- Failure to do so may be subject to enforcement actions. In the case of a restaurant, for example, enforcement can take the form of the suspension of its license to operate. Over two dozen such suspensions have been issued during the pandemic.
- Businesses that are required to enforce the face covering requirement and fail to do so despite being directed by a law enforcement officer to enforce the requirement, can be charged with a class E crime punishable by a fine of up to \$10,000.

#### **V. State and Federal Disabilities Laws:**

- We appreciate that it is not always easy for businesses to ensure that their customers wear face coverings. No matter the circumstances, maintaining the safety of both customers and employees should be the primary consideration.

- One challenge is a person entering a store or restaurant claiming exemption from wearing a face covering because of a disability. The Maine Human Rights Commission has posted [guidance](#) on its website addressing this situation.
- The guidance states: “A business may decline to allow the person in the store to shop, but still is required to deliver its services with other accommodations in order to remain compliant with the [Maine Human Rights Act].” Such accommodations may include offering the option of a face shield, allowing for take-out or curbside service, use of the services of a personal shopper in the store (with audio or video if needed), or providing an individual appointment time to enter the store without other customers present.
- However, beyond making reasonable accommodations, during a public health emergency, disability laws do not require a business to admit a customer not wearing a face covering.

## **VI. Criminal Trespass**

Another challenge is a person who simply refuses to wear a face covering when asked, for any number of reasons.

- A customer who refuses the request of a business to comply with a posted requirement to wear a face covering or to leave the premises may be considered a trespasser. Its employees have the right to contact local law enforcement to have the person removed.

## **VII. What to Do**

- Frontline workers in restaurants and retail establishments may need assistance handling situations with customers who are being difficult or uncooperative. Again, the primary objective should always be to maintain the safety of all involved. Whenever business owners or employees find themselves facing individuals who refuse to comply with face covering requirements, they may call local law enforcement.

## **VIII. Resources**

- Resources are available to help on the State of Maine website.

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