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Gallatin City-County Health Department

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EMERGENCY LOCAL HEALTH RULE RELATING TO COVID-19

EHR-2020-005

CLOTH FACE COVERINGS FOR COVID-19 PREVENTION

WHEREAS, a state of emergency exists in Montana due to the global outbreak of the COVID19 Novel Coronavirus;

WHEREAS, COVID-19 is a respiratory disease that can result in serious illness or death and can easily spread from person-to-person;

WHEREAS, the Centers for Disease Control and Prevention (CDC) identifies the potential public health threat posed by COVID-19 both globally and in the United States as "high" and has advised that person-to-person spread of the COVID-19 will continue to occur globally, including within the United States, Montana, and Gallatin County, Montana;

WHEREAS, the circumstances of this outbreak may exceed the capacity of the services, personnel, equipment, supplies and facilities of Gallatin County if proactive measures are not continued to mitigate and limit the spread of COVID-19 infections in the community;

WHEREAS, during the course of the pandemic, Montana Governor Steve Bullock has issued directives requiring the closure of non-essential businesses, providing social distancing requirements, and limiting non-essential travel;

WHEREAS, the Gallatin City-County Board of Health ("Board") adopted emergency health rules similarly restricting the operation of certain businesses in Gallatin County due to the COVID-19 pandemic;

WHEREAS, on April 22, 2020, Governor Bullock issued a directive providing guidance and conditions for the phased reopening of businesses in Montana, beginning with Phase One;

WHEREAS, Governor Bullock issued a subsequent directive on May 19, 2020, establishing conditions for the second phase of the phased reopening of Montana;

WHEREAS, both the April 22nd and May 19th Directives recognize the importance of individual responsibility, through good hygiene and strict adherence to social distancing, to fight against new infections, and emphasize the continued need to protect those most vulnerable to complications from COVID-19;

WHEREAS, both the April 22nd and May 19th Directives also allow for implementation of the

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phased reopening on a county-by county basis and direct local officials to “coordinate on a regional basis and continue to assess the conditions in their jurisdictions.” Further, the Directives allow local public health authorities to adopt “more restrictive approaches based on local need”;

WHEREAS, on July 15, 2020, Governor Bullock issued a directive providing for the mandatory use of face coverings by employees, contractors, customers, and members of the public five years of age and older within businesses, government offices, and indoor spaces open to the public;

WHEREAS, the July 15th Directive states that “all inconsistent local government health ordinances or orders are preempted by this Directive, but only to the extent they are less restrictive,” and local governments “may adopt more restrictive ordinances”;

WHEREAS, pursuant to § 50-2-116(1)(f), MCA, the Gallatin City-County Board of Health (Board) has the duty to “identify, assess, prevent, and ameliorate conditions of public health importance through: (i) epidemiological tracking and investigation; (ii) screening and testing; (iii) isolation and quarantine measures; (iv) diagnosis, treatment, and case management; (v) abatement of public health nuisances; (vi) inspections; (vii) collecting and maintaining health information; (viii) education and training of health professionals; or (ix) other public health measures as allowed by law”;

WHEREAS, § 50-1-101(2), MCA, defines a “condition of public health importance” as “a disease, injury, or other condition that is identifiable on an individual or community level and that can reasonably be expected to lead to adverse health effects in the community”;

WHEREAS, the Board also has the duty pursuant to § 50-2-116(1)(g), MCA, to “protect the public from the introduction and spread of communicable disease or other conditions of public health importance, including through actions to ensure the removal of filth or other contaminants that might cause disease or adversely affect public health”;

WHEREAS, pursuant to § 50-2-118, MCA, a local health officer in carrying “out the purpose of the public health system . . . shall . . . (2) take steps to limit contact between people in order to protect the public health from imminent threats, including but not limited to ordering the closure of buildings or facilities where people congregate and cancelling events”, and “(5) pursue action with the appropriate court if this chapter or rules adopted by the local board or department under this chapter are violated”;

WHEREAS, per Chapter 1, Section 5 of the Gallatin City-County Health Code, the Board may adopt an Emergency Local Health Rule when it finds the rule: (1) “must be adopted to deal with an emergency situation affecting the public, health, safety, or welfare;” (2) “the emergency cannot be averted or remedied by any other administrative act;” and (3) at least two-thirds of the Board votes to approve the rule;

WHEREAS, the CDC recommends that people wear cloth face coverings in public settings and when around people who do not live in their household, especially when other social distancing measures are difficult to maintain;

WHEREAS, the CDC has determined that cloth face coverings may help prevent people who have COVID-19 from spreading the virus to others and are most likely to reduce the spread of COVID-19 when they are widely used by people in public settings;

WHEREAS, a number of public health experts – including U.S. Surgeon General Jerome Adams and Dr. Anthony Fauci, Director of the National Institute of Allergy and Infectious Diseases – have identified widespread use of face coverings as an important part of a shared effort to reduce disease spread during the ongoing COVID-19 pandemic;

WHEREAS, per Section 50-2-116, MCA, COVID-19 is a condition of public health importance that must be prevented and ameliorated through the requirements established herein for face coverings, and to protect the public from the further introduction and spread of COVID-19 in Gallatin County;

WHEREAS, this Emergency Health Rule requires that persons within Gallatin County, Montana, wear Face Coverings in certain public settings, as further described below, and that businesses and organizations require the use of Face Coverings in certain public settings;

WHEREAS, this Emergency Health Rule also allows for the imposition of the criminal penalties provided at § 50-2-124, MCA, in addition to the civil remedies available; and

WHEREAS, for the foregoing reasons, the Board finds, pursuant to Chapter 1, Section 5 of the Gallatin City-County Health Code, that this Emergency Rule 2020-002 must be adopted to deal with an emergency situation affecting the public health, safety, or welfare, and this emergency cannot be averted or remedied by any other administrative act.

NOW, THEREFORE, EFFECTIVE IMMEDIATELY, THE FOLLOWING EMERGENCY LOCAL HEALTH RULE IS ADOPTED:

1. **“Face Covering,”** as used in this Emergency Rule, means a covering made of cloth, fabric, or other soft or permeable material, without holes, that covers the nose and mouth and surrounding areas of the lower face. A Face Covering may be factory-made or may be handmade and improvised from ordinary household materials. The Face Covering should fit snugly but comfortably against the side of the face, include multiple layers of fabric, allow for breathing without restriction, and be able to be laundered and machine-dried without damage or change to shape. A Face Covering should be replaced when it becomes dirty, wet, and/or difficult to breathe through.

Any mask that incorporates a one-way valve (typically a raised plastic cylinder about the size of a quarter on the front or side of the mask) that is designed to facilitate easy exhaling is not a Face Covering under this Rule and may not be used to comply with this Rule’s requirements. Valves of that type permit droplet release from the mask, putting others nearby at risk.

A video showing how to make a Face Covering and additional information about how to wear and clean Face Coverings may be found at the website of Centers for Disease Control and Prevention, at <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover.html>.

Should a Face Covering be found to restrict airflow (difficulty breathing), a face shield that covers the eyes, nose, and mouth should be worn. These should be made of clear plastic and cleaned at least once per day (and best if cleaned multiple times per day).

“Business” as used in this Emergency Rule, means a for-profit or non-profit entity that has employees or volunteers. The term “business” includes, but is not limited to, retail stores, food and beverage establishments, public lodging, personal care providers, medical providers, pharmacies, construction sites, gyms and fitness services, indoor recreational facilities, indoor entertainment facilities, educational institutions, government entities, gas stations, repair and service providers, non-profit organizations, realty services, legal services, transportation services, and ride sharing services.

“Indoor Space Open to the Public,” as used in this Emergency Rule, means an indoor space, whether publicly owned or privately owned, where the public has access by right or invitation, express or implied, regardless of whether the public must pay to gain access. This term includes the public areas of Businesses, in addition to, but not limited to, building lobbies, common spaces, elevators, bathrooms, gathering spaces, meeting rooms, and other indoor spaces outside of private homes in which people gather.

“Social Distance” and “Social Distancing” as used in this Emergency Rule, mean keeping a safe space between yourself and other people who are not from your household in order to avoid contact with others for prolonged periods (currently defined by the CDC as 15 minutes or more). To practice social distancing, an individual should stay at least 6 feet (about 2 arms’ length) from other people who are not from their household.

2. All persons in Gallatin County, Montana, must wear a Face Covering consistent with the Governor’s July 15, 2020 Directive and any guidance issued by the State of Montana. To the extent this Emergency Health Rule conflicts with said Directive or guidance, the more restrictive requirement shall control.
3. Except as specifically exempted at Section 7, all persons in Gallatin County, Montana, including children 5 years of age or older, must wear a Face Covering outside their home or place of residence in the following situations:
 - a. When they are inside, or in line to enter, any Business or Indoor Space Open to the Public, or indoor work area in which Social Distancing is not feasible;
 - b. When they are inside, or in line to enter, any publicly accessible area of a government location or facility to seek or receive services;
 - c. When they are inside a K-12 classroom or in line to enter a K-12 classroom and cannot Socially Distance from others; however, this requirement applies to children in grade 5 or younger only to the extent required by school policy per Section 6(e) below;
 - d. When they are obtaining services at a healthcare operation, including, but not limited to, hospitals, clinics, and walk-in health facilities, dentists, pharmacies, blood banks, other healthcare facilities, behavioral health providers, and facilities providing veterinary and similar healthcare services for animals – unless directed otherwise by an employee or worker at the healthcare operation; or

- e. When they are waiting for or riding on public transportation or paratransit, or while they are riding in a taxi, private car service, shuttle, tour or ride-sharing vehicle; or
 - f. When they are at a construction site and Social Distancing is not feasible.
4. Except as specifically exempted at Section 7 below, drivers or operators of any public transportation, paratransit vehicle, taxi, private car service, shuttle, tour, ride-sharing vehicle, or any other vehicle for hire must wear a Face Covering at all times while driving or operating such vehicle, regardless of whether a member of the public is in the vehicle, to reduce the spread of respiratory droplets in the vehicle. This Emergency Rule does not require any person to wear a Face Covering while driving alone, or exclusively with other members of the same family or household, in a motor vehicle.
5. Businesses, including institutions of higher learning and entities and organizations with workers performing government functions, must:
- a. Except as specifically exempted at Section 7 below, require their employees, students, customers, contractors, owners, and volunteers to wear a Face Covering while on the premises and when performing work off-site any time the employee, customer, contractor, owner, or volunteer is:
 - i. Within six feet of others in an Indoor Space Open to the Public or
 - ii. Present in any space visited by members of the public, such as by way of example and without limitation, reception areas, grocery store or pharmacy aisles, service counters, public restrooms, cashier and checkout areas, waiting rooms, service areas, and other spaces used to interact with the public, regardless of whether anyone from the public is present at the time; or
 - iii. Present in any space in which food is prepared or packaged for sale or distribution to others; or
 - iv. Working in or walking through common areas such as hallways, stairways, elevators, and parking facilities; or
 - v. In any room or enclosed area in which other people (except for members of the person's own household or residence) are present and Social Distancing is not feasible.
 - vi. At a construction site and Social Distancing is not feasible.
 - b. Take reasonable measures, such as posting signs, to remind their customers and the public of the requirement that they wear a Face Covering while inside of or waiting in line to enter the business, facility, or location.
 - c. Provide Face Coverings for employees and volunteers, and provide accommodations and exemptions from the Face Covering requirement for employees, contractors, students, customers, volunteers, and visitors if such accommodations or exemptions are required by:
 - i. State or federal disabilities laws, including the Americans with Disabilities Act (ADA) and the Americans with Disabilities Act Amendments Act (ADAAA).

- ii. State or federal labor laws; or
 - iii. State or federal public accommodations laws.
6. Except as specifically exempted at Section 7 below, the following guidelines apply to childcare facilities, daycares, camps, and schools serving grades 5 and below for the use of Face Coverings on children:
- a. Children under the age of 3 should not wear Face Coverings;
 - b. Unless Face Coverings are required by State directive or guidance, Face Coverings for children over 3 who are not napping are recommended but not required;
 - c. No child should wear a face covering while napping;
 - d. Children in grade 5 or younger should be monitored if they are wearing a Face Covering. If the Face Covering is creating discomfort or resulting in the child touching their face frequently, reconsider whether a mask is appropriate for that child;
 - e. Unless such policies are required by state directive or guidance, schools should consider Face Covering policies for grades K through 5 to encourage usage among children but may implement policies that do not require Face Coverings for some or all students in those grades;
 - f. Parents dropping off and picking up children must wear Face Coverings while they are at the school, daycare, camp, or facility; and
 - g. Face Coverings are required for staff caring for children and interacting with parents.
7. A Face Covering is not required under the following circumstances:
- a. When a person is in an office or in an indoor work area in which others outside of that person's household or residence are not within 6 feet of the person, as long as the public does not regularly visit the office or indoor work area. Such individuals should put on a Face Covering when coworkers are working within six feet, when being visited by a client or customer, and anywhere members of the public or other coworkers are regularly present;
 - b. Any child under the age of three should not wear a Face Covering;
 - c. When a person is seated at a table of a restaurant or other food service establishment, and the person is separated by at least six (6) feet from other patrons at other tables. The person should wear a mask while entering, exiting, or otherwise moving about the establishment;
 - d. When a person is (1) inside or obtaining services at a business, government function, or healthcare operation, any of which are engaged primarily in providing congregate care, residential health care, or congregate shelter, and (2) the individual is engaged in activities not conducive to wearing a Face Covering, such as eating or sleeping, or the individual is in an area of the facility that is not designed for community gathering, such as a sleeping area;
 - e. If a person has 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;
- f. If a person is outside in an area and situation where Social Distancing can be maintained, or when engaged in an activity that makes wearing a Face Covering physically impractical or unsafe, such as during strenuous physical exercise or when swimming;
 - g. When a person is obtaining services from a personal care establishment and the services are not possible without removal of a Face Covering, such as receiving a facial massage, facial grooming, facial piercing, etc.;
 - h. When a person is seeking to communicate with someone who is hearing impaired;
 - i. When a person is giving a speech or engaging in an artistic, cultural, musical, or theatrical performance for an audience, provided the audience is separated by at least six feet of distance; or
 - j. While a person temporarily removes their Face Covering for identification purposes.

IT IS FURTHER ORDERED that this Emergency Rule shall remain in effect for ninety (90) days, ending on October 22, 2020.

Scope and Enforcement

1. Violations of this Emergency Rule may be enforced pursuant to Sections 50-2-118, 50-2-123 and 50-2-124, MCA, which state:

50-2-118. Powers and duties of local health officers. In order to carry out the purpose of the public health system, in collaboration with federal, state, and local partners, local health officers or their authorized representative shall:

...

(5) pursue action with the appropriate court if this chapter or rules adopted by the local health board or department under this chapter are violated.

50-2-123. Compliance order authorized. If a person refuses or neglects to comply with a written order of a state or local health officer within a reasonable time specified in the order, the state or local health officer may cause the order to be complied with and initiate an action to recover any expenses incurred from the person who refused or neglected to comply with the order. The action to recover expenses shall be brought in the name of the city or county.

50-2-124. Penalties for violations. (1) A person who does not comply with rules adopted by a local board is guilty of a misdemeanor. On conviction, the person shall be fined not less than \$10 or more than \$200.

(2) Except as provided in 50-2-123 and subsection (1) of this section, a person who violates the provisions of this chapter or rules adopted by the

department under the provisions of this chapter is guilty of a misdemeanor. On conviction, the person shall be fined not less than \$10 or more than \$500 or be imprisoned for not more than 90 days, or both.

(3) Each day of violation constitutes a separate offense.

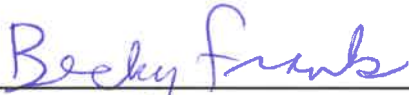
(4) Fines, except justice's court fines, must be paid to the county treasurer of the county in which the violation occurs.

2. This Emergency Rule shall control in the case of any conflict with an existing rule of the Board or order of the Gallatin City-County Health Officer.

Severability

If any provision of this Emergency Rule, in whole or in part, is found to be invalid by a court of competent jurisdiction, such decision will not affect the validity of the remaining provisions of this Rule.

DATED this 24th day of July, 2020.



Becky Franks, Chair
Gallatin City-County Board of Health

ATTEST:



Eric Semerad, Clerk & Recorder

