

ORDER OF COUNTY JUDGE LINA HIDALGO
County Judge's Seventh Order Requiring Fever and Health Screening
and Requiring Face Coverings in County Buildings

Whereas, in response to the novel coronavirus (COVID-19) pandemic, federal, state and local officials have issued proclamations and declarations of disaster and thereby invoked their respective emergency management plans to protect the public; and

Whereas, on January 31, 2020, the Secretary of Health and Human Services declared a public health emergency “in response to COVID-19, a highly contagious virus that spreads through person-to-person contact and continues to ravage communities across the globe”; and

Whereas, in March 2020, the U.S. Centers for Disease Control and Prevention (“CDC”) issued guidance as to individuals, recommending that individuals practice social or physical distancing to prevent the spread of COVID-19 by staying at least six feet from other people, by refraining from gathering in groups, by staying out of crowded places and by avoiding mass gatherings; and

Whereas, the CDC has repeatedly issued guidance explaining that COVID-19 cases, hospitalizations and deaths across the United States are rising; that COVID-19 most commonly spreads during close contact; that when people with COVID-19 cough, sneeze, sing, talk, or breathe they produce respiratory droplets; and that infections occur mainly through exposure to respiratory droplets when a person is in close contact with someone who has COVID-19; and encouraging individuals to wear a mask in public settings, stay at least six feet apart, avoid crowds and wash hands often to protect self and others in the community; and

Whereas, on January 29, 2021, the U.S. Centers for Disease Control and Prevention ordered that effective February 2, 2021, people must wear masks over the mouth and nose when boarding, disembarking and for the duration of travel on planes, buses, trains, and other forms of public transportation traveling into, within, or out of the United States and in U.S. transportation hubs such as airports and stations; and

Whereas, the U.S. Centers for Disease Control and Prevention continues to recommend that “people wear masks in public settings, at events and gatherings, and anywhere they will be around other people”; and

Whereas, the Texas Disaster Act is codified at Sections 418.001 – 418.261 of the Texas Government Code; and

Whereas, on March 13, 2020, Governor Greg Abbott issued a disaster proclamation, certifying under Section 418.014 of the Texas Government Code that COVID-19 poses an imminent threat of disaster for all counties in the State of Texas; and

Whereas, in each subsequent month since then and, most recently on March 6, 2021, Governor Abbott determined that a state of disaster continues to exist in all counties due to COVID-19 and has issued proclamations renewing the disaster declaration for all Texas counties; and

Whereas, in his March 6, 2021 Proclamation, as in his earlier Proclamations, Governor Abbott relied on the Commissioner of the Texas Department of State Health Services' (Dr. John Hellerstedt's) determination that COVID-19 "represents a public disaster within the meaning of Chapter 81 of the Texas Health and Safety Code"; and

Whereas, Governor Abbott has issued executive orders and suspensions of Texas laws in response to the COVID-19 pandemic, aimed at protecting the health and safety of Texans and ensuring an effective response to this disaster; and

Whereas, on July 2, 2020, Governor Abbott issued Executive Order GA-29, relating to the use of face coverings during the COVID-19 disaster; and

Whereas, in Executive Order GA-29, Governor Abbott found that health authorities have repeatedly emphasized that wearing face coverings is one of the most important and effective tools for reducing the spread of COVID-19; that given the current status of COVID-19 in Texas, requiring the use of face coverings is a targeted response that can combat the threat to public health using the least restrictive means; that more extreme measures may be avoided if people follow this requirement; and that wearing a face covering is important not only to protect oneself, but also to avoid unknowingly harming fellow Texas, especially given that many people who go into public may have COVID-19 without knowing it because they have no symptoms; and

Whereas, Governor Abbott's Executive Order GA-29, with some exceptions, ordered "[e]very person in Texas shall wear a face covering over the nose and mouth when inside a commercial entity or other building or space open to the public, or when in an outdoor public space, wherever it is not feasible to maintain six feet of social distancing from another person not in the same household"; and

Whereas, on March 2, 2021, Governor Abbott issued Executive Order GA-34, which "strongly encourages" individuals in Texas counties "not" in an area with high COVID-19 hospitalizations "to wear face coverings over the nose and mouth wherever it is not feasible to maintain six feet of social distancing from another person not in the same household", but proclaims that effective March 10, 2021, no person in such areas "may be required by any jurisdiction to wear or to mandate the wearing of a face covering"; and

Whereas, Executive Order GA-34 provides, with respect to Texas counties in "areas of high hospitalizations," that there is no state-imposed requirement to wear a face covering; that the county judge may use COVID-19-related mitigation strategies; that no jurisdiction may impose confinement in jail as a penalty for violating any order issued in response to COVID-19; and that no jurisdiction may impose a penalty of any kind for failure to wear a face covering or failure to mandate that customers or employees wear face coverings, except that a legally authorized official may act to enforce trespassing laws and remove violators at the request of a business establishment or other property owner; and

Whereas, Executive Order GA-34 provides that nothing in GA-34 precludes businesses or other establishments from requiring employees or customers to follow additional hygiene measures, including the wearing of a face covering; and

Whereas, Executive Order GA-34 emphasizes that in providing or obtaining services, every person (including individuals, businesses and other legal entities) is strongly encouraged to use good-faith efforts and available resources to follow the Texas Department of State Health Services (DSHS) health recommendations, found at www.dshs.texas.gov/coronavirus; and

Whereas, on March 19, 2020, John Hellerstedt, M.D., Commissioner of Texas' Department of State Health Services ("DSHS"), issued a public health disaster declaration, certifying that the introduction and spread of the communicable disease known as COVID-19 in the State of Texas created an immediate threat of disaster for all counties in the State of Texas, poses a high risk of death to a large number of people and creates a substantial risk of public exposure because of the disease's method of transmission and evidence that there is community spread in Texas, and declaring a state of public disaster for the entire State of Texas; and

Whereas, each month since March of 2020, Dr. Hellerstedt has renewed the public health disaster declaration for the entire State of Texas, determining that COVID-19 "continues to present an immediate threat, poses a high risk of death to a large number of people and creates a substantial risk of public exposure because of the disease's method of transmission and evidence that there is community spread in Texas", directing that each person shall act responsibly to prevent and control communicable disease, and specifying actions to be immediately taken to reduce and delay the spread of COVID-19; and

Whereas, on October 16, 2020 and each month since then, Dr. Hellerstedt's renewed public health disaster declarations have specified these steps to be taken to "let Texas lead the nation, as we so often do, in doing all we can to prevent further spread of COVID-19": "Wash your hands often. ... Remain physically physically/socially distant by keeping at least six feet apart from others who are not in your household. Wear a face covering whenever you are near other people outside of your own household."; and

Whereas, since July 3, 2020, DSHS' Minimum Recommended Health Protocols for "all individuals" has provided that "[a]ll individuals over the age of 10 must wear a face covering (over the nose and mouth) wherever it is not feasible to maintain six feet of social distancing from another individual not in the same household or, for those engaging in physical activities outdoors, wherever the individual is not able to maintain a safe physical distance from others not in the same household"; and

Whereas, since September 17, 2020, DSHS' Minimum Recommended Health Protocols for "all employers and event organizers" has provided that "[a]ll employees and customers must wear a face covering (over the nose and mouth) wherever it is not feasible to maintain six feet of social distancing from another individual not in the same household or, for those engaging in physical activities outdoors, wherever the individual is not able to maintain a safe physical distance from others not in the same household"; and

Whereas, on March 3, 2021, the Texas Commission on Jail Standards issued guidance to Texas sheriffs in accordance with Governor Abbott’s Executive Order GA-34, directing each Texas sheriff to develop a plan that continues to ensure the safety of the public, staff and inmates at his/her jail facility prior to allowing in-person visitation; requiring review by the local health department prior to submission of the plan to the Commission; giving each local sheriff discretion “in conjunction with the local health department” to make determinations regarding wearing of face coverings; strongly encouraging every facility “to use good faith efforts and available resources to follow DSHS health recommendations” and continuing to strongly recommend the wearing of masks; and

Whereas, the Supreme Court of Texas has issued emergency orders in response to the imminent threat of the COVID-19 pandemic; and

Whereas, on March 5, 2021, the Supreme Court of Texas issued its Thirty-Sixth Emergency Order regarding the COVID-19 State of Disaster, renewing its Thirty-Third Emergency Order as amended; and

Whereas, the Supreme Court of Texas’ Thirty-Sixth Emergency Order provides in part that subject only to constitutional limitations, all courts in Texas may in any civil or criminal case “and must to avoid risk to court staff, parties, attorneys, jurors, and the public—without a participant’s consent” impose screening requirements which, in part, require every participant in a proceeding to alert the court if the participant has, or knows of another participant who has COVID-19 or a fever, chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, sore throat, loss of taste or smell, congestion or runny nose, nausea, vomiting, or diarrhea or has recently been in close contact with a person who is confirmed to have COVID-19 or exhibiting these symptoms”; and

Whereas, the Supreme Court of Texas’ Thirty-Sixth Emergency Order requires Texas courts to use all reasonable efforts to conduct proceedings remotely and to take reasonable actions to avoid exposing court proceedings to the threat of COVID-19, including requiring compliance with social distancing protocols and face coverings worn over the nose and mouth; and

Whereas, the Supreme Court of Texas’ Thirty-Sixth Emergency Order provides that “[a] district court, or municipal court may conduct in-person proceedings, including both jury and non-jury proceedings, if the local administrative district judge or presiding judge of a municipal court, as applicable, adopts, in consultation with the judges in the county or municipal court buildings: minimum standard health protocols for court proceedings and the public attending court proceedings that will be employed in all courtrooms and throughout all public areas of the court buildings, including masking, social distancing, or both.”; and

Whereas, the Supreme Court of Texas’ Thirty-Sixth Emergency Order provides that “[a] district court, or municipal court may conduct in-person proceedings, including both jury and non-jury proceedings, if the local administrative district judge or presiding judge of a municipal court, as applicable, adopts, in consultation with the judges in the county or municipal court buildings: minimum standard health protocols for court proceedings and the public attending

court proceedings that will be employed in all courtrooms and throughout all public areas of the court buildings, including masking, social distancing, or both.”; and

Whereas, upon Declaration of a Local Disaster, a County Judge is authorized to control ingress to and egress from a disaster area and control the movement of persons and the occupancy of premises in accordance with Section 418.108(g) of the Texas Government Code; and

Whereas, a County Judge acts as the emergency management director for the county and serves as the Governor’s designated agent in the administration and supervision of duties during a state of emergency declared by the Governor in accordance with Section 418.1015(a) and (b) of the Texas Government Code; and

Whereas, a County Judge, serving as the Governor’s designated agent in the administration and supervision of duties during a state of emergency declared by the Governor, “may exercise the powers granted to the governor under this chapter on an appropriate local scale” in accordance with Section 418.1015(b) of the Texas Government Code; and

Whereas, a County Judge, serving as the Governor’s designated agent in the administration and supervision of duties during a state of emergency declared by the Governor, is authorized to control ingress to and egress from a disaster area and control the movement of persons and the occupancy of premises on an appropriate local scale in accordance with Sections 418.1015 and 418.018 of the Texas Government Code; and

Whereas, on March 11, 2020, Harris County Judge Lina Hidalgo issued a Declaration of Local Disaster for Public Health Emergency to allow Harris County to take measures to reduce the possibility of exposure to COVID-19 and promote the health and safety of Harris County residents in accordance with Section 418.108(a) of the Texas Government Code. Since then, the Harris County Commissioners Court has repeatedly extended this Declaration in accordance with Section 418.108(b) of the Texas Government Code. This Declaration has remained in effect since March 11, 2020; and

Whereas, on March 19, 2020, the Harris County Judge issued her first order requiring that any person entering a building owned, occupied or operated by Harris County may be screened for symptoms consistent with COVID-19; and

Whereas, the Harris Judge has issued subsequent orders requiring that any person entering a building owned, occupied or operated by Harris County may be screened for symptoms consistent with COVID-19 and, with some exceptions, requiring all people ten years of age or older seeking entry into a Harris County owned or controlled building to wear a face covering over their nose and mouth when entering and while in such building; and

Whereas, the Texas Attorney General has issued opinions regarding the emergency COVID-19-related disaster orders issued by State and local officials in response to the COVID-19 pandemic; and

Whereas, on August 3, 2020, the Texas Attorney General issued Opinion No. KP-0322, concluding that pursuant to a county judge’s emergency authority under Tex. Gov’t Code § 418.108, a county judge operating under a local disaster order may require a person to wear a facial covering when occupying a courthouse or other county-owned or controlled building; and

Whereas, in Opinion No. KP-0322, the Texas Attorney General concluded that consistent with its authority to maintain and regulate a county courthouse and other county offices and buildings under Section 291.001(3) of the Texas Local Government Code, a commissioners court “may require any person entering a courthouse or other county-owned or controlled building to wear a facial covering”; and

Whereas, in Opinion No. KP-0322, the Texas Attorney General concluded that consistent with the Texas Supreme Court’s emergency orders and guidance promulgated by the Office of Court Administration, courts may require any person entering the courthouse in which they preside to wear a facial covering while in the courthouse; and

Whereas, in Opinion No. KP-0322, the Texas Attorney General concluded that in accordance with their broad inherent authority to control orderly proceedings in their courtrooms, courts can require individuals in their courtrooms to wear facial coverings if necessary to maintain order and safety; and

Whereas, on June 11, 2020, Harris County implemented a Harris County COVID-19 Threat Level System that provides color coded levels of risk based on the incidence of COVID-19 and its transmission level in Harris County and provides corresponding recommendations to the public.¹ At the time of implementation of the Harris County COVID-19 Threat Level System, Harris County was at a Level 2, Significant Uncontrolled Community Transmission; and

Whereas, on June 26, 2020, the Harris County Judge elevated Harris County’s COVID-19 threat level to Level 1 (Red – “severe uncontrolled community transmission” presenting a severe threat to public health), given the rapidly accelerating outbreak in COVID-19 cases in Harris County and the resulting strain on local hospitals’ capacity and local public health departments’ testing and contact tracing capacity. Harris County’s COVID-19 threat level has remained at Level 1 through the date of this Order; and

Whereas, the transmission of COVID-19 has not dissipated but remains a significant threat to the health and safety of the Harris County Community and rates of infection are increasing at an alarming rate and the number of people ending up in the hospital, ICU, or on ventilators is also dramatically rising despite efforts by local authorities to control the spread; and

Whereas, the Harris County Judge has determined that extraordinary emergency measures must be taken in order to protect the health, safety and welfare of the citizens of Harris County to mitigate the effects of this public health emergency and to facilitate a response to the public health threat;

¹ See https://www.readyharris.org/Portals/60/documents/INFO_ReopeningStrategyPUBLIC-FULL.pdf

NOW THEREFORE, I, COUNTY JUDGE FOR HARRIS COUNTY, TEXAS, PURSUANT TO THE AUTHORITY VESTED BY TEXAS GOVERNMENT CODE CHAPTER 418, HEREBY FIND AND ORDER:

That the findings and recitations set out in the preamble to this ORDER are found to be true and correct and they are hereby adopted and made a part hereof for all purposes.

Effective upon signing and continuing through the fourteenth day following the expiration of Governor Greg Abbott's final declaration certifying that the novel coronavirus (COVID-19) poses an imminent threat of disaster unless terminated or modified by an earlier order issued by me as the County Judge for Harris County, Texas, I deem it in the public interest to order the following:

1. Except as otherwise expressly provided below:
 - a. Any person entering a building owned or controlled by Harris County may be screened for symptoms consistent with COVID-19 including but not limited to:
 - i. A fever screen for a temperature above 100.4 degrees Fahrenheit;
 - ii. A health screen for symptoms consistent with COVID-19;
 - iii. A travel questionnaire; and/or
 - iv. A screen for exposure to anyone with the above conditions.
 - b. Any person who exhibits symptoms consistent with COVID-19 may be denied entrance into the building.
 - c. Any person who refuses to submit to screening may be denied entrance into the building.
2. Except as otherwise expressly provided below, all people 10 years of age or older seeking entry into a Harris County owned or controlled building shall wear a face covering over their nose and mouth when entering such building. Failure to wear an appropriate face covering will result in the person being barred from entry.
3. Except as otherwise expressly provided below, all people 10 years of age or older shall wear a face covering over their nose and mouth while inside a Harris County owned or controlled building. Any person who removes his/her face covering after entering such building will be directed to leave the building. If that person refuses to do so, he/she will be removed from the building.
4. Appropriate face coverings may include, but are not limited to, face shields, face masks, homemade masks, scarfs, bandanas, or a handkerchief. **IT IS STRONGLY RECOMMENDED THAT PEOPLE NOT OBTAIN OR WEAR MEDICAL MASKS or N-95 RESPIRATORS AS THEY ARE A NEEDED RESOURCE**

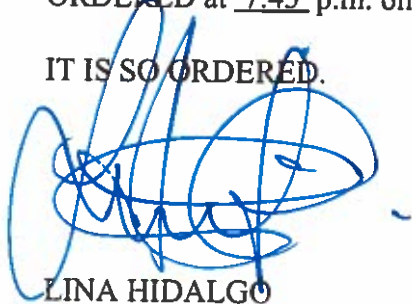
FOR HEALTH CARE PROVIDERS AND FIRST RESPONDERS. Our healthcare workers and first responders on the front-line combatting COVID-19 must have priority access to medical masks or other personal protective equipment.

5. This face-covering requirement applicable to persons entering and inside a Harris County owned or controlled building does not apply to any person:
 - a. with a medical condition or disability that prevents wearing a face covering.
 - b. while that person is consuming food or drink, or is seated to eat or drink in a café, cafeteria or restaurant located in a County owned, operated or occupied building.
 - c. who is obtaining a service that requires temporary removal of the face covering for security surveillance, screening, or a need for specific access to the face, but only to the extent deemed by a County official or employee to be necessary for the temporary removal.
 - d. who is voting, assisting a voter, serving as a poll watcher, or actively administering an election, but wearing a face covering is strongly encouraged.
 - i. Voters are strongly encouraged, but not required, to wear face coverings in the polling place in order to protect the health and safety of voters, election workers, and local election officials and their staff. Polling locations have been supplied with ample masks to provide to voters who do not have one of their own. Voters who cannot or choose not to wear a mask should be encouraged to vote curbside. However, if a voter prefers to vote indoors, he/she must be allowed inside and should vote at a designated machine for his/her safety and the safety of other voters and poll workers. Reasonable social distancing measures may also be put into place for voters who are not wearing face coverings in the polling place.
 - ii. A voter who refuses to participate in the screening process in a County owned, operated or occupied building may be required to use a separate entrance to the building, provided the entrance is ADA-accessible. If there is a line to enter the voting location, voters may also be directed to wait in a separate line for voters.
 - e. who is a Harris County official or employee who is alone in a room or office in a County owned, operated or occupied building behind a closed door; in any area in a County building where he/she can easily keep six feet away from other people, and does so; or in any area in a County building where he/she would not otherwise come into close proximity (*i.e.*, within six feet) of other officials, employees or the public.

6. If a judge's courtroom is located in a courthouse with other county offices, that judge will determine whether face coverings must be worn in his/her courtroom and chambers. A court's orders regarding face coverings do not extend to the use of such face coverings in other areas of a Harris County owned or controlled building.
7. This Order applies to any person entering a building owned or controlled by Harris County, and is intended to reduce the airborne transmission of COVID-19 and to thus protect all persons in such buildings. Compliance with this Order is voluntary. However, any person who refuses to wear a face covering or adhere to other protective measures in compliance with the terms of this Order will not be permitted to enter or remain in a Harris County owned or controlled building.
8. Any law enforcement agency based in Harris County is hereby authorized to enforce this order by denying entry into or removing a person from a Harris County owned or controlled building in accordance with the terms of this order.
9. If any subsection, sentence, clause, phrase, or word of this Order or any application of it to any person, structure, or circumstance is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, then such decision will not affect the validity of the remaining portions or applications of this Order.
10. The Harris County Judge will file this Order with the Harris County Clerk's Office. Harris County will post this Order on the Internet. All Harris County officials and employees are authorized to do any and all things necessary or convenient to accomplish the purpose of this Order.

ORDERED at 7:45 p.m. on this 9th day of March, 2021, in the County of Harris, Texas.

IT IS SO ORDERED.



LINA HIDALGO
HARRIS COUNTY JUDGE