EMERGENCY ORDER OF LOCAL HEALTH OFFICER AND
DOUGLAS COUNTY COMMISSION
RESOLUTION NO. 21-09


Medical, Scientific and Legal Justifications for Order

1. The Local Health Officer is authorized and required, pursuant to K.S.A. 65-119, K.S.A. 65-129b, K.S.A. 65-201 and K.S.A. 65-202 to exercise and maintain supervision over known or suspected cases of any infectious or contagious disease during its continuance, and to issue orders seeing that all such cases are properly handled and that the provisions of the Kansas public health laws as to isolation, quarantine and disinfection are duly enforced.

2. The United States Centers for Disease Control and Prevention (CDC), the Kansas Department of Health and Environment (KDHE) and the Douglas County Local Health Officer, all recommend implementation of community mitigation strategies to increase containment of the virus to reduce spread of COVID-19.

3. The worldwide outbreak of COVID-19 and the resulting epidemic in Kansas and Douglas County continue to threaten the life and health of our citizens and visitors, as well as the economy, and remains a public disaster affecting life, health, property and the public peace.

4. The Local Health Officer believes continuation of some community mitigation strategies is necessary due to the continued influx of new cases and new strains, in order to allow the resources for contact tracing and exposure notification to be able to address the community spread of the disease and to ensure the capacity of other local resources is adequate to meet the need.

5. The purpose of this order is to provide community mitigation strategies to minimize the spread of COVID-19 in light of the continued influx of new cases and new variants, which may be more transmissible, including but not limited to the British and South African variants.

6. The mask mandate fulfills the stated purpose because research has demonstrated that mask mandates reduce the COVID-19 incidence rates for communities that implement them. (See, e.g., http://dx.doi.org/10.15585/mmwr.mm6947e2.)

7. Because a mask cannot be worn while actively eating and drinking, the Social Distancing Requirement for establishments where indoor dining and drinking occur on a regular basis fulfills the stated purpose because research has demonstrated that the restrictions for indoor dining and drinking is an important component of reducing the transmission of COVID-19, especially in light of the emergence of highly transmissible variants. (See, e.g., https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/personal-social-activities.html.
8. The Local Health Officer has considered the least restrictive ways an order can meet its stated purpose and believes this order is narrowly tailored to meet its purpose.

9. The Local Health Officer deems it necessary to issue this order mandating the wearing of face masks and curtailing the operation of businesses as set forth below as the least restrictive method for meeting its purpose based upon the medical and scientific evidence.

10. Pursuant to K.S.A. 65-201(b)(2), this Order has been presented to the County Commission and became effective when approved by the Commission on April 14, 2021.

NOW, THEREFORE, BE IT ORDERED by the Local Health Officer and the Douglas County Commission, pursuant to the above authorities, that:

1. Business Restrictions:

   a. All businesses must comply with the following:

      i. Maintain at least 6 feet of distance between customers or groups of customers ("Social Distancing Requirement");

      ii. Follow fundamental cleaning and public health practices detailed on covid.ks.gov; and

   b. All businesses in operation should follow industry-specific guidelines as provided on covid.ks.gov. Following any additional best practice guidance from each business sector is strongly encouraged.

   c. Unless otherwise noted in this order, the following venues are restricted:

      i. Entertainment venues, including: auditoriums; arenas; banquet halls; cinemas; conference centers; concert halls; performance venues; sporting venues; community centers; stadiums; theaters casinos; night clubs; and adult entertainment;

      ii. Recreational facilities and places of public amusement, including: gyms, fitness and recreational centers; amusement parks; arcades; bingo halls; bowling alleys; and clubs;

      iii. Parties, informal gatherings, lectures, meetings, parades, fairs, festivals, sporting events, and performances.

   d. Venues listed in subsection 1(c) above are restricted as follows and must:

      i. Limit the number of individuals (staff and customers) in the facility, building or room to 50 percent of the lowest occupant load on the certificate of
occupancy of the facility, building or room, in which the gathering is occurring; provided, however, the venues may opt out of this occupancy limitation by providing written notice to Lawrence-Douglas County Public Health and by posting a sign at their front entrance, in at least 48-point font, that notifies patrons that the venue has opted out of this occupancy limitation. The Social Distancing Requirement must be adhered to at all times both inside the facility and for any activity taking place outside the facility.

ii. Limit groups of patrons to a maximum of ten (10) persons per table, and Social Distancing Requirements between tables/groups of patrons shall be observed;

iii. Require all food and beverage to be consumed by patrons while seated;

iv. Require face masks to be worn by all staff and any patron not seated at a table, when seated at a table not actively eating or drinking, and when interacting with establishment staff.

e. Restaurants, taverns, and all other such businesses serving food and/or drink indoors, including public, private, or membership-only businesses, must:

i. Limit the number of individuals (staff and customers) in the facility, building or room to 50 percent of the lowest occupant load on the certificate of occupancy of the facility, building or room, in which the gathering is occurring. (For the purposes of this provision, outdoor seating is not included in this seating-capacity limitation; however, to qualify as "outdoor seating," at least one side of an enclosure/tent must be open to the elements to allow for proper ventilation and air movement.) However, the business may opt out of this occupancy limitation by providing written notice to Lawrence-Douglas County Public Health and by posting a sign at their front entrance, in at least 48-point font, that notifies patrons that the venue has opted out of this occupancy limitation. Regardless of the opt out, the Social Distancing Requirement must be adhered to at all times both inside the facility and for any activity taking place outside the facility.

ii. Limit groups of patrons to a maximum of ten (10) persons per table, and Social Distancing Requirements between tables/groups of patrons shall be observed;

iii. Require all food and beverage at restaurants and bars to be consumed by patrons while seated;

iv. Require all patrons to be seated at all times when not entering/exiting the business or visiting a restroom facility; and
v. Require face masks to be worn by all staff and any patron not seated at a table, when seated at a table not actively eating or drinking, and when interacting with establishment staff.

2. Non-Business Venue Restrictions:

   a. All indoor activities and venues not otherwise described in 1(c) or which are not governmental and judicial functions, schools, healthcare facilities, private business, and religious and faith-based activities must comply with the following:

      i. Maintain at least a 6-foot distance between individuals or groups (not including individuals who reside together).

      ii. Follow fundamental cleaning and public health practices. (Compliance with any additional sector-specific best practice guidance is strongly encouraged.)

      iii. Recreational, youth or other non-professional organized sports facilities, sports tournaments, sports games, and sports practices may open or occur if they follow guidelines established by the Lawrence-Douglas County Public Health, including the use of masks by all officials, coaches, participants and spectators at all times. The Social Distancing Requirement must be adhered to at all times by all spectators and all officials, coaches and participants when possible.

      iv. Require face masks to be worn by all staff and any patron not seated at a table, when seated at a table not actively eating or drinking, and when interacting with establishment staff.

3. Essential Functions:

   a. This order is not meant to significantly disrupt the performance of essential functions.

4. Individual Mask Order: Any person in Douglas County shall cover their mouth and nose with a mask or other face covering when they are in the following situations:

   • Inside, or in line to enter, any indoor public space;

   • 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 (unless directed otherwise by an employee or healthcare provider);

   • Waiting for or riding on public transportation or while in a taxi, private car service, or ride-sharing vehicle;
• While outdoors in public spaces and unable to maintain a 6-foot distance between individuals (not including individuals who reside together) with only infrequent or incidental moments of closer proximity.

5. **Business Mask Order:** All businesses or organizations in Douglas County must require all employees, customers, visitors, members, or members of the public to wear a mask or other face covering when:

• Employees are working in any space visited by customers or members of the public, regardless of whether anyone from the public is present at the time;

• Employees are working in any space where food is prepared or packaged for sale or distribution to others;

• Customers, members, visitors, or members of the public are in a facility managed by the business or organization; or

• Employees are in any room or enclosed area where other people (except for individuals who reside together) are present and are unable to maintain a 6-foot distance except for infrequent or incidental moments of closer proximity.

6. **Exceptions to Mask Order:** The following are exempt from wearing masks or other face coverings in the situations described in paragraphs 1 and 2:

• Persons age five years or under should not wear a face covering because of the risk of suffocation. This is particularly true for children age two years and under;

• 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 deaf or hard of hearing, or communicating with a person who is deaf or hard of hearing, 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 they maintain a 6-foot distance between individuals (not including individuals who reside together or are seated together) with only infrequent or incidental moments of closer proximity;
• Persons who are engaged in an activity that a professional or recreational association, regulatory entity, medical association, or other public-health-oriented entity has determined cannot be safely conducted while wearing a mask or other face covering;

• Persons who are engaged in an activity that is governed by a professional or collegiate association whose regulations and procedures are determined by the Local Health Officer to be sufficient to limit the spread of COVID-19;

• Persons engaged in an activity or event held or managed by the Kansas Legislature;

• Persons engaged in a court-related proceeding held or managed by the Kansas Judiciary; and

• Persons engaged in any lawful activity during which wearing a mask or other face covering is prohibited by law.

7. Mask Order Definitions:

• “Mask or other face covering” means a covering of the nose and mouth that is secured to the head with ties, straps, or loops over the ears or is simply wrapped around the lower face. A mask or other face covering can be made of a variety of synthetic and natural fabrics, including cotton, silk, or linen. Ideally, a mask or other face covering has two or more layers. A mask or other face covering may be factory-made, sewn by hand, or can be improvised from household items such as scarfs, bandanas, T-shirts, sweatshirts, or towels.

• “Public space” means any indoor or outdoor space or area that is open to the public; this does not include private residential property or private offices or workspaces that are not open to customers or public visitors.

8. Nothing in this order shall restrict, limit or supersede the Secretary of Health and Environment or the Local Health Officer’s authority to make isolation, quarantine, or other orders pursuant to K.S.A. 65-129c.

9. This Order maybe supplemented or modified as required for the effective and efficient management and control of the coronavirus epidemic in the county by further order or direction of the Douglas County Commission, Lawrence-Douglas County Board of Public Health and/or by the Douglas County Local Health Officer.

10. If any portion of this order is found to be unenforceable or not to be the least restrictive means to achieve its purpose, that portion shall be regarded as removed from this order, while the remaining portions shall valid and the order shall be interpreted and enforced as if it did not contain said portion.

This order shall become effective as of 12:01 a.m. on April 15, 2021 and remain in force until May 26, 2021 unless it is otherwise rescinded or modified by the County Commission.

(signatures on next page)
IT IS SO ORDERED THIS 14th DAY OF APRIL 2021

Dr. Thomas Marcellino
Local Health Officer
Douglas County, Kansas

Approved and Adopted by:

BOARD OF COUNTY COMMISSIONERS OF
DOUGLAS COUNTY, KANSAS

Attest:

Shannon Portillo, Chair

Shannon Reid, Vice Chair

Patrick Kelly Member.