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The Department of Public Safety's Guidance¹ to Local Law Enforcement Agencies Related to the Enforcement of Executive Order 20-81

On July 22, Governor Walz issued Executive Order 20-81, *Requiring Minnesotans to Wear a Face Covering in Certain Settings to Prevent the Spread of COVID-19* ("EO"). Beginning Friday, July 24 at 11:59 p.m., all Minnesotans must wear a face covering in all public indoor spaces and indoor businesses, unless they are the sole individual in the space. Additionally, workers are required to wear a face covering when working outdoors in situations where social distancing cannot be maintained. The EO remains in effect until the peacetime emergency declared in Executive Order 20-01 is terminated or until it is rescinded by proper authority.

Minnesota has strongly recommended widespread use of face coverings since April. As shown in other states, COVID-19 surges can happen quickly—even in areas with previously low or decreasing case numbers—and with disastrous consequences. Because Minnesota has begun the process of reopening its economy and people are now leaving the home more frequently, smart infection-control measures (including use of source control measures, such as face coverings) are particularly important to prevent further COVID-19 spread. Minnesota and other states previously encouraged voluntary compliance with face covering recommendations, but compliance with such recommendations has been inconsistent and in some areas, low. Other states are having success controlling the spread of COVID-19 by mandating face coverings in certain settings in accordance with CDC and WHO recommendations.

The overall goal of the EO is to advise Minnesotans that wearing a face covering will protect them, their families, their friends, and others, and the expectation is that Minnesotans will voluntarily comply.

Individuals

The penalties for violations of the EO by individuals are civil, not criminal. An individual who fails to comply with the EO is subject to a petty misdemeanor

¹ This guidance is focused solely on law enforcement encounters with individuals and businesses, but is not meant to anticipate every encounter. Please refer to Executive Order 20-81 (attached) for more detailed information.

- Alcohol and Gambling Enforcement
- Bureau of Criminal Apprehension
- Driver and Vehicle Services
- Emergency Communication Networks
- Homeland Security and Emergency Management
- Minnesota State Patrol
- Office of Communications
- Office of Justice Programs
- Office of Pipeline Safety
- Office of Traffic Safety
- State Fire Marshal

citation and a fine of up to \$100. Children under 14-years-old are exempt, as are students 14-years-old and older when they are on the premises of a school or higher education institution in which they are enrolled.

Individuals are being instructed *not* to contact their local law enforcement agencies to report other individuals suspected of violating the EO. It should be reiterated within your communities that individuals should not confront those whom they suspect of a violation. Unfortunately, face coverings have become an increasingly volatile issue and citizen confrontations may lead to violence-related arrests and increased risk of exposure to COVID-19. We suggest engaging with your local jurisdictions (e.g., city council/county commissioners) to determine how best to process and respond to complaints of alleged violations.

It is important to emphasize that when a suspected violation occurs, education is the first priority. There are many reasons an individual may not be able to wear a face covering² and advising the individual of the EO and then providing a face covering (if available) is a best practice.

Under no circumstances should an individual be arrested solely for failing to wear a face covering. That being said, if an individual is at a business without a face covering and refuses to leave the premises at the request of the owner, law enforcement may determine an arrest is warranted (e.g., criminal trespass). Even under this circumstance, however, we still encourage law enforcement officers to educate citizens before taking enforcement action.

The EO requires individuals to remove their face covering when asked to do so to verify their identity—for example, when applying for or renewing a driver’s license or identification card. However, businesses and other persons or entities (e.g., liquor stores) that are required or authorized to verify a person’s identity are encouraged to use other means of identification that do not require a person to remove their face covering (e.g., referring to height or eye color on a DL or ID card), to the extent possible.

As to permit to carry and face coverings, individuals wearing a face covering may possess a handgun under a legal permit to carry in the same manner as an individual who is not wearing a face covering. There have been questions related to the applicability of Minnesota Statutes, section 609.735, which states “[a] person whose identity is concealed by the person in a public place by means of a robe, mask, or other disguise, unless based on religious beliefs, or incidental to amusement, entertainment, protection from weather, or medical treatment, is guilty of a misdemeanor.” Public health-related face coverings are not what was contemplated by this statute.

It is important to note that face coverings may pose special challenges for people who are deaf, hard of hearing, or have other communication needs or disabilities. The EO not only provides exemptions for people who are unable to wear a face covering due to a medical or mental

² There is no defined list of recognized medical or mental health conditions or disabilities that would prevent someone from wearing a face covering. Even if such a list existed, there can be individual variation in tolerance for wearing a face covering among people with the same condition—one person might tolerate a face covering and another might not.

health condition or disability, but also allows people without such conditions to temporarily remove their face covering to communicate with those who do.

Children

Children under two-years-old *must not* wear face coverings.

Children between the ages of two- and five-years-old are not required to wear face coverings, but are encouraged to do so if they can wear a face covering properly (e.g., without frequently touching or removing it).

Businesses

Because businesses (their owners and management) have a heightened responsibility for public health and safety, the penalties can be criminal charges, (up to a misdemeanor, \$1,000 fine, and not more than 90 days in jail), civil enforcement and fines (up to \$25,000), and regulatory enforcement (e.g., actions by government authorities that license or regulate the business).

Businesses must post one or more signs that are visible to all persons - including workers, customers, and visitors - instructing them to wear face coverings as required by this EO. Businesses are advised by the Minnesota Department of Employment and Economic Development (“DEED”) to consider the following best practices when confronted with a customer or visitor who refuses to wear a face covering:

- If a customer (or visitor) enters or attempts to enter without a face covering, communicate face covering requirements to the customer, offer the customer a face covering, and request they put it on.
- The business may also offer the customer alternatives for service, if available, including curbside pick-up, home delivery, or retrieving merchandise for the customer.
- Based on its assessment of the situation, the business may determine there is a need to engage law enforcement to assist.

DEED’s primary recommendation to businesses is to handle a customer who refuses to wear a face covering in the same manner as any other difficult customer.

This EO does not allow businesses (or individuals) the right to physically restrain or remove a noncompliant individual when it would not otherwise be legal to do so. Employees and management are advised to avoid situations that would put themselves or others at risk of harm. In these situations, like any others involving the potential for violence, the business should contact their local law enforcement agency for assistance.

When assessing a situation involving a business’ potential violation of the EO, the local law enforcement agency or state regulatory agency should consider the seriousness of any non-compliance. Factors relevant to the seriousness of the noncompliance include, but are not limited to:

- The number of workers and customers not requiring a face covering as required by the EO.

- How long and how often workers and customers are not wearing face coverings.
- The consequences of workers and customers not wearing face coverings, including indications the business is associated with the transmission of COVID-19.
- The actions taken by the business to prevent and respond to their workers' and customers' non-compliance with face covering requirements.

Finally, to the extent that they have authority to do so, cities and other political subdivisions and private businesses³ may implement requirements related to face covering actions that go beyond what is stated in the EO, provided they are protective of the public health and consistent with applicable law. These jurisdictions may not, however, take actions that are *less* protective of the public health.

The objective of any enforcement action related to face coverings should be to achieve compliance with the EO to protect the health of all Minnesotans.

Carpe Diem
John M. Harrington
Commissioner

³ The EO does not authorize landlords or property managers to require tenants and others to wear face coverings in tenants' living units.