

EMERGENCY ORDER OF THE BOARD OF HEALTH

July 14, 2020

WHEREAS, in time of epidemic or threatened epidemic, or when a dangerous communicable disease is unusually prevalent, the board of health of a general health district may make and enforce such rules and regulations as are wise and necessary for the protection of the health of the people of the community pursuant to Ohio Revised Code section 3707.04; and

WHEREAS, pursuant to Ohio Revised Code section 3709.21, “[i]n cases of emergency caused by epidemics of contagious or infectious diseases, or conditions or events endangering the public health, the board may declare such orders and regulations to be emergency measures, and such orders and regulations shall become effective immediately without such advertising, recording, and certifying”; and

WHEREAS, the Ohio Supreme Court, in *D.A.B.E., Inc. v. Toledo-Lucas Cty. Bd. of Health*, 773 N.E.2d 536, 545, 96 Ohio St.3d 250, 258–59, 2002 -Ohio- 4172, ¶ 36, ¶ 44 and ¶ 46 (Ohio,2002), states that:

The *Schlenker* court specifically cited R.C. 3709.22 as allowing boards of health to take “such steps as are necessary to protect the public health and to prevent disease.” *Schlenker*, 171 Ohio St. at 25, 12 O.O.2d 42, 167 N.E.2d 920 ... In addition, as was the case with *Weber*, there were other specific grants of statutory authority to the board to regulate that specific area. See former R.C. 3707.34, 1953 H.B. No. 1 (allowing board of health to regulate the sale of milk and to revoke a seller's permit if milk is kept in an “unsanitary condition”), and R.C. 3707.04 through 3707.32 (general regulation of communicable diseases). Thus, in each case discussed above, statutes other than R.C. 3709.21 authorized the regulatory action taken by the local boards of health.

R.C. 3709.21 contemplates that it may be necessary at times for local boards of health to act expeditiously to respond to any new health hazard or disease. R.C. 3709.21 provides: “In cases of emergency caused by epidemics of contagious or infectious diseases, or conditions or events endangering the public health, the board may declare such orders and regulations to be emergency measures, and such orders and regulations shall become effective immediately without such advertising, recording, and certifying.” However, as respondents aptly point out,

the General Assembly has elsewhere delegated, through various provisions of R.C. Chapter 3707, the authority to local boards of health to address epidemics and dangerous communicable diseases. See R.C. 3707.04 et seq.

We grant that local boards of health are better situated than the General Assembly to protect the public health. That is one reason why R.C. 3709.21 does not burden local boards with restrictive guidelines or standards. Local boards need the flexibility to meet unforeseen public-health concerns and to promptly address any problems arising from previous orders and regulations. Moreover, local boards need the freedom to abate health hazards that are unique to their specific locations. However, local boards cannot act in any area of public health without prior legislative approval; and

WHEREAS, COVID-19 is a respiratory disease that can result in serious illness or death, caused by the SARS-CoV-2 virus, which is a new strain of coronavirus that had not been previously identified in humans and can easily spread from person to person. The virus is spread between individuals who are in close contact with each other (within about six feet) through respiratory droplets produced when an infected person coughs or sneezes. It may be possible that individuals can get COVID-19 by touching a surface or object that has the virus on it and then touching their own mouth, nose, or eyes; and

WHEREAS, on January 30, 2020, the International Health Regulations Emergency Committee of the World Health Organization declared the outbreak of COVID-19 a public health emergency of international concern; and

WHEREAS, on January 31, 2020, Alex M. Azar II, Secretary of Health and Human Services, determined and declared that a public health emergency exists in the United States in relation to COVID-19; and

WHEREAS, on March 9, 2020, Governor Mike DeWine, signed an Executive Order declaring a State of Emergency for the entire State of Ohio in relation to COVID-19; and

WHEREAS, the Governor's Executive Order declaring a State of Emergency for the entire State of Ohio urged all citizens to heed to the advice of the Department of Health and other emergency officials regarding COVID-19 in order to protect their health and safety; and

WHEREAS, the State of Ohio is experiencing "community spread" of the virus that causes COVID-19; and

WHEREAS, on March 14, 2020, the Ohio Department of Health issued a Director's Journal Entry amending the January 23, 2020 entry making COVID-19 a Class A reportable disease in Ohio; and

WHEREAS, on March 18, 2020, the Board, pursuant to Resolution 20-040, declared a public health emergency in the entire jurisdictions of the townships and villages constituting the Franklin County General Health District and including the cities of Bexley, Canal Winchester, Dublin, Gahanna, Grandview, Grove City, Groveport, Hilliard, New Albany, Pickerington, Reynoldsburg, Upper Arlington, Westerville, and Whitehall (the "Cities"); and

WHEREAS, on July 1, 2020, the Centers for Disease Control and Prevention (CDC) lists over 10,000,000 worldwide cases of COVID-19 and over 500,000 deaths; and

WHEREAS, there is an epidemic, specifically, COVID-19, within the jurisdiction of Franklin County Public Health, which on July 2, 2020 has led to a designation by the state Public Health Advisory System Risk Levels of Level 3, characterized by very high exposure and spread with a recommendation to limit activities as much as possible and to follow all current health orders; and

WHEREAS, on July 2, 2020, the Mayor of the City of Columbus issued an Executive Order requiring face coverings in indoor areas accessible to the public and within the confines of public and private transportation regulated by the City of Columbus; and

WHEREAS, face coverings can decrease the spread of respiratory droplets from people, and evidence has grown, as shown in numerous recent studies, that the use of face coverings decreases the spread of COVID-19 within populations; and

WHEREAS, the Ohio Department of Health Director's orders, including, but not limited to: the Director's Order that Reopens Hair Salons, Day Spas, Nail Salons, Barber Shops, Tattoo Parlors, Body Piercing Locations and Tanning Facilities, with Exceptions, signed May 14, 2020, extended until July 7, 2020; the Director's Order that Reopens Campgrounds, with Exceptions, signed May 20, 2020, extended until July 7, 2020; the Director's Order that Provides Guidance for Baseball, Softball, Batting Cages, Golf Courses, Miniature Golf, Local and Public Pools and Aquatic Centers, Tennis Facilities, Skills Training for All Sports, and General Non-Contact Sports including Bowling Alleys, with Exceptions, signed May 22, 2020, extended until July 7, 2020; the Director's Order that Reopens Gyms, Dance Instruction Studios, and Other Personal Fitness Venues, with Exceptions, signed May 22, 2020, extended until July 7, 2020; the Director's Updated and Revised Orders for Business Guidance and Social Distancing extended until July 7, 2020; the Director's Order that Reopens Facilities Providing Child Care Services, with

Exceptions, signed May 29, 2020, extended until July 7, 2020; the Director's Order that Reopens Youth Day Camps and Residential Camps, with Exceptions, signed June 1, 2020, extended until July 7, 2020; and the Director's Amended Order that Reopens Restaurants and Bars, Banquets and Catering Facilities to Dine-in Service, with Exceptions, signed June 5, 2020, extended until July 7, 2020 mandate that businesses must require all employees to wear facial coverings, except for one of the following reasons:

- Facial coverings in the work setting are prohibited by law or regulation;
- Facial coverings are in violation of documented industry standards;
- Facial coverings are not advisable for health reasons;
- Facial coverings are in violation of the business's documented safety policies;
- Facial coverings are not required when the employee works alone in an assigned work area; or
- There is a functional (practical) reason for an employee not to wear a facial covering in the workplace.

WHEREAS, to prevent the spread of COVID-19, and thereby to save lives, face coverings must be worn to reduce the spread of COVID-19; and

WHEREAS, some people have medical or behavioral health issues, disabilities, or other physical reasons that necessitate an exemption from wearing a face covering; and

WHEREAS, the Cities of Bexley, Columbus, Dublin, Grandview Heights, Hilliard, Upper Arlington, Westerville, Whitehall, and Worthington have issued Executive Orders or adopted legislation requiring face coverings in indoor areas accessible to the public; and

WHEREAS, the Board of Health heard sworn testimony from _____
Alex Jones, Assistant Health Commissioner and Dr. Miller Sullivan, Medical Director, FCPH
_____; and

Now, therefore upon motion of Board Member Dr. James _____, seconded by Board Member Ms. Chastang, and pursuant to Ohio Revised Code section 3709.21, the Board issues this Order adopting a rule pursuant to Ohio Revised Code section 3707.04, be it resolved:

RULE REQUIRING FACE COVERING

Section 1. Face Covering Requirements.

A. Definitions. For purposes of this Order:

1. "Face Covering" means a covering of the nose, mouth and chin that is secured to the head with ties, straps, or loops over the ears or is simply wrapped around the lower face. A Face Covering can be made of a variety of synthetic and natural fabrics, including cotton, silk, or linen. Ideally, a Face Covering has two (2) or more layers. A 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. These Face Coverings are not intended for use by healthcare providers in the care of patients. A face shield that covers the nose, mouth and chin also meets the Face Covering requirements of this Order.

2. "Surgical Mask" means American Society for Testing and Materials ("ASTM") Level 1, 2, or 3 approved procedural and surgical masks. An N95 respirator approved by the National Institute for Occupational Safety and Health ("NIOSH") (or a respirator from another country allowed by the Occupational Safety & Health Administration, the Food & Drug Administration, or the CDC) is not recommended for general public use or use in public settings, as it should be reserved for healthcare providers and other medical first responders in a health care setting. However, if worn, these respirators would meet both the Face Covering and Surgical Mask requirements of this Order.

3. "Health District" includes the jurisdictions of the cities of Bexley, Canal Winchester, Dublin, Gahanna, Grandview, Grove City, Groveport, Hilliard, New Albany, Pickerington, Reynoldsburg, Upper Arlington, Westerville, and Whitehall ("City or Cities"), the unincorporated townships including Blendon, Brown, Clinton, Franklin, Hamilton, Jackson, Jefferson, Madison, Mifflin, Norwich, Perry, Plain, Pleasant, Prairie, Sharon, Truro, and Washington ("Townships") and the villages of Brice, Harrisburg, Lockbourne, Marble Cliff, Minerva Park, Obetz, Riverlea, Urbancrest, and Valleyview ("Villages").

4. "Businesses covered by this Order". For the purposes of this Order, covered businesses include any for-profit, non-profit, educational entities, or governmental entities (other than state and federal) regardless of the nature of the service, the function it performs, or its corporate or entity

structure. Nothing in this Order is intended to encroach on or interfere with the separation of powers under the Ohio Constitution.

B. Where Face Coverings are Required.

1. Businesses covered by this Order must require all employees to wear facial coverings, except for one of the following reasons:

- a) Facial Coverings in the work setting are prohibited by law or regulation;
- b) Facial Coverings are in violation of documented industry standards;
- c) Facial Coverings are not advisable for health reasons;
- d) Facial Coverings are in violation of the business's documented safety policies;
- e) Facial Coverings are not required when the employee works alone in an assigned work area; or
- f) There is a functional (practical) reason for an employee not to wear a Facial Covering in the workplace.

2. All individuals within the Health District shall wear a Facial Covering at all times when:

- a. In any indoor location that is not a residence;
- b. Outdoors and unable to consistently maintain a distance of six feet or more from individuals who are not members of their household; or
- c. Waiting for, riding, driving, or operating public or private vehicles conveying persons, baggage or freight, or used for such purposes, including but not limited to: public transportation; a taxi; a private car service; or a ride sharing vehicle. This does not apply to private or rental vehicles where members of a family are sharing a vehicle. This does not apply to vehicles engaged in direct travel through a county that does not stop in that county.

3. The requirement to wear a facial covering does not apply when;

- a. The individual is under ten years of age;
- b. A medical condition, including those with respiratory conditions that restrict breathing, mental health conditions, or disability contraindicates the wearing of a facial covering;
- c. The individual is communicating or seeking to communicate with someone who is hearing impaired or has another disability, where the ability to see the mouth is essential for communication;
- d. The individual is alone in an enclosed space, such as an office, and which space is not intended for use or access by the public;
- e. The individual is actively engaged in exercise in a gym or indoor facility so long as six or more feet of separation between individuals exists;
- f. The individual is actively participating in athletic practice, scrimmage, or competition that is permitted under a separate Department of Health order;
- g. The individual is actively engaged in a public safety capacity, including but not limited to law enforcement, firefighters or emergency medical personnel;
- h. The individual is seated and actively consuming food or beverage in a restaurant or bar;
- i. Facial coverings are prohibited by law or regulation;
- j. Facial coverings are in violation of documented industry standards;
- k. Facial coverings are in violation of a business's documented safety policies;
- l. Individual is actively participating in broadcast communications;
- m. Individual is an officiant of a religious services; or
- n. Individual is exercising his or her First Amendment rights.

Schools that offer kindergarten through grade twelve instruction should follow the guidelines set forth by the Ohio Department of Education and the Ohio Department of Health.

C. Enforcement. The enforcement of this Order shall occur through the following process:

1. An initial written warning shall be issued, along with written information pertaining to the requirements of this Section, by the Health Commissioner or a registered sanitarian.
2. Any subsequent violations may be referred to the Franklin County Sheriff's Office or any Police Department with jurisdiction within the Franklin County Health District including the Cities for investigation and potential prosecution.
3. Notwithstanding (C)(1-2) above, a violation of this Order is a minor misdemeanor (first offense) and may be enforced by any law enforcement officer subject to Ohio Revised Code section 2935.26.

D. Penalty. This Order may be enforced and penalties imposed to the extent set forth in Ohio law.

1. Violation of the Rule

No person shall violate sections 3707.01 to 3707.50 or section 3707.53 of the Revised Code, or any order or regulation of the board of health of a city or general health district made in pursuance thereof, obstruct or interfere with the execution of such order, or willfully or illegally omit to obey such order. R.C. § 3707.48

A corporation shall, for any violation, obstruction, interference, or omission mentioned in section 3707.48 of the Revised Code, forfeit and pay to the proper city or general health district a sum not to exceed three hundred dollars, to be collected in a civil action brought in the name of the board of health of such district. No proof of actual damages shall be required, but the court or jury, finding other facts to justify recovery, shall determine the amount by reference to all the facts, culpatory, exculpatory, or extenuating, adduced upon the trial. R.C. § 3707.49

Whoever violates ... section 3707.48 of the Revised Code is guilty of a minor misdemeanor on a first offense; on each subsequent offense , the person is guilty of a misdemeanor of the fourth degree. R.C. § 3707.99(B)

2. Violation of the Order

When an order of the board of health of a city or general health district made pursuant to section 3709.21 of the Ohio Revised Code is not complied with in whole or in part, the Board may petition the court of common pleas (or the Franklin County Environmental Court R.C. § 1901.183) for injunctive or other appropriate relief requiring all persons to whom such order of the board is directed to comply with such order. The court of the county in which such offense is alleged to be occurring may grant such injunctive or other appropriate relief as the equities of the case require. R.C. § 3709.211

Whoever violates section 3709.21 of the Ohio Revised Code or any order or regulation of the board of health of a general health district adopted in pursuance of those sections, or whoever interferes with the execution of an order or regulation of that nature by a member of the board or person authorized by the board, shall be fined not more than one hundred dollars or imprisoned not more than ninety days, or both. No person shall be imprisoned for the first offense, and the prosecution shall always be for a first offense unless the affidavit upon which the prosecution is instituted contains the allegation that the offense is a subsequent offense. R.C. § 3709.99

E. Application. This Order sets forth minimum standards which are applicable to the Cities of Bexley, Canal Winchester, Dublin, Gahanna, Grandview, Grove City, Groveport, Hilliard, New Albany, Pickerington, Reynoldsburg, Upper Arlington, Westerville, and Whitehall, and the unincorporated townships and villages in the Franklin County General Health District. This Order does not prevent the Cities to which this Order applies from adopting more stringent ordinances, orders, rules, or regulations. In the event of conflict between this Order and an ordinance, order, rule, or regulation of a municipality to which this Order applies, the more stringent language shall be deemed to apply and govern.

F. Authority. This Order does not amend, supersede, rescind, or in any way modify Orders issued by the Ohio Department of Health.

G. Savings. If any portion of this Order is determined to be invalid or unenforceable, the remainder of this Order shall remain intact and enforceable.

Section 2. Effective Date.

That this Order is intended for the general public and, pursuant to Ohio Revised Code section 3709.21, shall be adopted, recorded, and certified as are ordinances of municipal corporations and the record thereof shall be given in all courts the same effect as is given such ordinances, but the advertisements of such orders and regulations shall be by publication in a newspaper of general circulation within the district. Publication shall be made once a week for two consecutive weeks or as provided in section 7.16 of the Revised Code. And in the case of this emergency caused by an epidemic of contagious or infectious disease, and conditions or events endangering the public health, the board declares such Order to be emergency measures, and such orders and regulations shall become effective immediately without such advertising, recording, and certifying.

Pursuant to Ohio Revised Code section 3709.21, this Order and the rules adopted herein shall become effective immediately and remain in full force and effect until rescinded by the Board. Additionally, the Board may amend such rules in the event the Health District's designation by the state Public Health Advisory System Risk Levels is Level 2 or below.

SO ORDERED ON July 14, 2020

Thomas Rudge, Jr.

Thomas Rudge, Jr., Ph.D., Board President

Roy Barnewall, DVM, Ph.D.

Latisha Chastang

Latisha Chastang, MNML

Arthur James

Arthur R. James, MD, FACOG

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Sally Morgan, MS, RN, AGPCNP-BC, ACNS-BC