THIRD EXTENSION OF EMERGENCY LOCAL HEALTH RULE RELATING TO COVID-19

EHR-2020-005-C

CLOTH FACE COVERINGS FOR COVID-19 PREVENTION

WHEREAS, a state of emergency continues to exists in Montana and Gallatin County due to the global outbreak of the COVID-19 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 virus that causes COVID-19 spreads more readily in certain environments including: indoor areas, during social interactions when people are in close proximity to others; when people are not wearing face coverings; and when people are exercising or raising their voices in a loud setting in a manner that produces respiratory droplets that spread the disease;

WHEREAS, recent scientific evidence estimates that more than half of all COVID-19 cases are spread by people with no symptoms of the disease, a characteristic of the virus that allows it to spread more rapidly and readily;

WHEREAS, uncontrolled spread of COVID-19 in the community leads to increased hospitalizations and deaths and makes it difficult or impossible to prevent spread in nursing homes, assisted living facilities, and other institutions that care for people at high risk;

WHEREAS, the CDC, the White House Task Force, and respected public health organizations recommend use of face coverings in public settings as an important way to limit spread of COVID-19 by limiting the distance and trajectory of respiratory droplets that spread the disease;

WHEREAS, a state report for Montana from the White House coronavirus task force attributed reductions in case rates and test positivity in December 2020 to intensified mitigation efforts in Montana, including requirements for face masks, and urged local health authorities to monitor and enforce requirements for face coverings and social distancing;
WHEREAS, by limiting the distance and trajectory of respiratory droplets, use of face coverings in indoor public spaces help prevent spread of the disease and protect the health of all individuals in those settings;

WHEREAS, universal use of face coverings helps prevent spread by individuals who do not have symptoms or have recently developed symptoms during the period of time they are most likely to pass the disease to others;

WHEREAS, hospitals and health care settings in Gallatin County and Montana typically experience higher numbers of sick and hospitalized individuals during winter months due to a variety of illnesses, a factor that increases the risk that facilities will exceed patient and staffing capacity during a surge in COVID-19 cases;

WHEREAS, the circumstances of this outbreak will 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, former Montana Governor Steve Bullock issued directives to mitigate the spread of COVID-19 in Montana, including directives in July and August 2020 providing for the mandatory use of face coverings, with certain delineated exceptions;

WHEREAS, the July 15, 2020 Directive appropriately recognized that “COVID-19 is an easily transmissible, potentially fatal respiratory illness that spreads in the air through droplets from infected persons,” and “COVID-19 is transmissible even by individuals who are not currently showing symptoms of the disease and who do not know they are infected;”

WHEREAS, the July 2020 Directive also acknowledged that the use of face coverings “is an effective means of limiting the potential for transmission to others by both symptomatic and asymptomatic individuals infected with the virus.” Further, the Directive cited an economic analysis from Goldman Sachs finding “universal face covering usage to be a potentially effective substitute for business closures;”

WHEREAS, on July 24, 2020, the Gallatin City-County Board of Health (“Board”) adopted Emergency Local Health Rule (EHR) 2020-005 requiring that all persons within Gallatin County, Montana, five years of age or older, wear Face Coverings in certain public settings as delineated therein, including when in line to enter or inside a Business or Indoor Space Open to the Public, and further requiring that businesses and organizations require the use of Face Coverings in such settings;

WHEREAS, EHR-2020-005 also allows for the imposition of the criminal penalties provided at § 50-2-124, MCA, in addition to the civil remedies available;

WHEREAS, on July 24, 2020, the Gallatin City-County Health Officer adopted Health Officer Order (HO) 2020-007, similarly requiring all persons within Gallatin County, five years of age or older, to wear Face Coverings in the public settings identified in EHR-2020-005 and requiring that businesses and organizations require the use of Face Coverings in such settings;
WHEREAS, pursuant to its terms and to Section 5.2 of Chapter 1, Gallatin City-County Health Code, EHR-2020-005 was set to expire ninety days after its adoption on October 22, 2020;

WHEREAS, on October 22, 2020, through EHR-2020-005-A, the Board amended EHR-2020-005 to require Face Coverings in grades K through 12 classrooms, and extended EHR-2020-005 for an additional 90-day period, expiring January 20, 2021;

WHEREAS, the Health Officer similarly amended HO-2020-007 on October 22, 2020, through HO-2020-007-A;

WHEREAS, on January 21, 2021, through the adoption of EHR-2020-005-B, the Board amended EHR-2020-005 to clarify that face coverings are required in schools, generally, not just when in classrooms or when in line to enter classrooms;

WHEREAS, the Board also amended EHR-2020-005 to clarify that the more restrictive Face Covering requirements established by the Board apply in Gallatin County, notwithstanding any conflict with any directive issued by newly elected Governor Gianforte or any guidance issued by a State agency;

WHEREAS, on February 12, 2021, Governor Greg Gianforte issued a “Directive Implementing Executive Order 2-2021,” which became immediately effective and repealed the requirements established by former Governor Bullock for the mandatory use of face coverings in Montana;

WHEREAS, the February 12th Directive expressly recognizes that local boards of health may adopt more restrictive rules in stating, with emphasis added: “In the interest of uniformity of laws and to prevent the spread of disease, all inconsistent local government health ordinances or orders are preempted by this Directive, but only to the extent they are less restrictive”;

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, the CDC continues to recommend 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, 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, while confirmed cases of COVID-19 in Gallatin County have declined since late January 2021, confirmed cases have remained present and have started to increase since mid-March;
WHEREAS, an incidence rate greater than 25 cases per 100,000 population has been identified by the Harvard Global Health Institute as the highest “red zone” risk level beyond which a locality may tip into uncontrolled spread¹;

WHEREAS, the 7-day rolling average of cases reported in the Gallatin County Weekly COVID-19 Surveillance Reports has ranged from a low of 16 cases to a high of 35 cases per 100,000 residents in February and March 2021;

WHEREAS, the World Health Organization recommends a test positivity rate below 5% as a criteria for opening businesses, and, according to public health experts, a positivity rate above 10% may mean more testing is necessary to avoid missing a significant number of cases in the community;

WHEREAS, the seven-day rolling average test positivity rate in Gallatin County as reported in the Gallatin County Weekly COVID-19 Surveillance Reports has ranged from a low of 3.6% to a high of 5.9% in February and March 2021;

WHEREAS, local hospitals in Bozeman and Big Sky have maintained their capacity to admit both COVID-19 and non-COVID-19 patients for necessary care through February and March 2021;

WHEREAS, there also has not been any significant diminishment in testing resources or test analysis turn-around time affecting the timely isolation of positive cases in February and March 2021;

WHEREAS, based on the CDC recommendations and the above epidemiological and resource indicators, the Board desires to extend EHR-2020-005, as amended, until May 27, 2021, the date of the Board’s regularly scheduled May meeting;

WHEREAS, it is necessary for the Board to continue the mitigation measures established through EHR-2020-005 to limit the spread of COVID-19 in the community, especially due to the confirmed presence of the more contagious coronavirus variants;

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, per § 50-2-116, MCA, COVID-19 is a condition of public health importance and, in order to protect the public from the further introduction and spread of COVID-19 in Gallatin County, the requirements established by EHR-2020-005, as amended, for the mandatory use of face coverings in certain public settings must be extended; and

WHEREAS, for the foregoing reasons, the Board finds, pursuant to Chapter 1, Section 5 of the Gallatin City-County Health Code, that EHR-2020-005, as amended, must be extended 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.


DATED this 5th day of April, 2021.

Becky Franks, Chair
Gallatin City-County Board of Health

ATTEST:

Eric Seemrad, Clerk & Recorder