

**City of Mission
Special City Council Meeting
Monday, July 6, 2020
6:00 p.m.**

This meeting will be held virtually via Zoom.
Information for the public on how to participate
will be available at missionks.org/calendar prior to the meeting.

AGENDA

1. Mandatory Mask Requirements



6090 Woodson Road
Mission, KS 66202
(913) 676.8350
www.missionks.org

NOTICE OF SPECIAL GOVERNING BODY MEETING
OFFICE OF THE CITY CLERK
MISSION, KANSAS

TO: Ronald E. Appletoft, Mayor

You are hereby notified that there will be a special meeting of the Governing Body at 6:00 p.m., Monday, July 6, 2020 via the virtual platform Zoom for the purpose of discussing the items listed below:

- 1. Mandatory Mask Requirements

Witness my hand and the seal of said city this 2nd day of July 2020.

State of Kansas)
Johnson County ss.)
City of Mission)

DocuSigned by:
Audrey McClanahan
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Audrey M. McClanahan, City Clerk



6090 Woodson Road
Mission, KS 66202
(913) 676.8350
www.missionks.org


NOTICE FOR SPECIAL GOVERNING BODY MEETING

TO: Ronald E. Appletoft, Mayor

You are hereby requested, in accordance with K.S.A. 14-111, to call a special meeting of the Governing Body of Mission, Kansas, to be held via the virtual platform Zoom on Monday, July 6, 2020 at 6:00 pm for the purpose of discussing the items listed below:

1. Mandatory Mask Requirements

Dated this 2nd day of July 2020

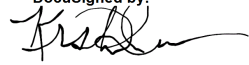
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Councilmember

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Councilmember

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Councilmember

EXECUTIVE ORDER NO. 20-52

Requiring individuals to wear masks or other face coverings in public

WHEREAS, securing the health, safety, and economic well-being of residents of the State of Kansas is this Administration's top priority;

WHEREAS, Kansas is facing a crisis-the pandemic and public health emergency of COVID-19-resulting in illness, quarantines, school closures, and temporary closure of businesses resulting in lost wages and financial hardship to Kansas citizens;

WHEREAS, the United States Departments of Health and Human Services declared a public health emergency for COVID-19 beginning January 27, 2020, with now more than 2,580,000 cases of the illness and more than 126,000 deaths as a result of the illness across the United States;

WHEREAS, the World Health Organization declared a pandemic on March 11, 2020;

WHEREAS, a State of Disaster Emergency was proclaimed for the State of Kansas on March 12, 2020;

WHEREAS, on March 13, 2020, the President of the United States declared the ongoing COVID-19 pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, tribes, territories, and the District of Columbia pursuant to Section 501 (b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121-5207 (the "Stafford Act");

WHEREAS, on March 13, 2020, the President of the United States pursuant to Sections 201 and 301 of the National Emergencies Act, 50 U.S.C. § 1601, et seq. and consistent with Section 1135 of the Social Security Act, as amended (42 U.S.C. § 1320b-5), declared a national emergency that the COVID-19 outbreak in the United States constitutes a national emergency beginning March 1, 2020;

WHEREAS, as of this date, in Kansas there have been 14,990 reported positive cases of COVID-19 spread among 97 counties, including 272 deaths;

WHEREAS, after a steady trend of decreasing metrics, recent weeks have seen the numbers of COVID-19 cases, hospitalizations, and deaths spike in Kansas and across the nation;

WHEREAS, this worrying trend of increased COVID-19 spread is a danger to the health and safety of every Kansan and also presents a serious threat to reopening and reviving the Kansas economy;

WHEREAS, wearing a mask in public is the easiest and most effective way to protect each other and help keep our businesses open and our economy running;

WHEREAS, wearing a mask in public is not only safe and easy, it is necessary to avoid more restrictive local measures that could involve closing businesses, schools, organized youth sports, and other important activities;

WHEREAS, the State of Kansas must remain flexible to account for the evolving nature and scope of the unprecedented public health emergency posed by COVID-19, while also simultaneously safely, strategically, and incrementally reopening business and facilitating economic recovery and revitalization;

WHEREAS, for the aforementioned and other reasons, and in recognition and furtherance of my responsibility to provide for and ensure the health, safety, security, and welfare of the people of the State of Kansas, requiring that masks or other face coverings be worn in public spaces is necessary to promote and secure the safety and protection of the civilian population; and

WHEREAS, in these challenging times, this Administration will do whatever it can to avoid immediate dangers to the health, safety, and welfare of Kansans.

NOW, THEREFORE, pursuant to the authority vested in me as Governor of the State of Kansas, including the authority granted me by K.S.A 48-924 and K.S.A 48-925(b) and (c)(11), in order to ensure that Kansans can to help keep each other safe and keep our businesses open as we restore our economy, I hereby direct and order the following:

1. Effective at 12:01 a.m. on Friday, July 3, 2020, any person in Kansas shall cover their mouth and nose with a mask or other face covering when they are in the following situations:
 - a. Inside, or in line to enter, any indoor public space;
 - b. 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;¹
 - c. Waiting for or riding on public transportation or while in a taxi, private car service, or ride-sharing vehicle;
 - d. 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.

¹ Unless directed otherwise by an employee or healthcare provider.

2. Also effective at 12:01 a.m. on Friday, July 3, 2020, all businesses or organizations in Kansas must require all employees, customers, visitors, members, or members of the public to wear a mask or other face covering when:
 - a. 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;
 - b. Employees are working in any space where food is prepared or packaged for sale or distribution to others;
 - c. Employees are working in or walking through common areas, such as hallways, stairways, elevators, and parking facilities;
 - d. Customers, members, visitors, or members of the public are in a facility managed by the business or organization; or
 - e. 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.
3. The following are exempt from wearing masks or other face coverings in the situations described in paragraphs 1 and 2:
 - a. Persons age five years or under—children age two years and under in particular should not wear a face covering because of the risk of suffocation;
 - b. 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;
 - c. Persons who are hearing impaired, or communicating with a person who is hearing impaired, where the ability to see the mouth is essential for communication;
 - d. 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;
 - e. 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;
 - f. 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;

- g. Athletes who are engaged in an organized sports activity that allows athletes to maintain a 6-foot distance from others with only infrequent or incidental moments of closer proximity;
 - h. 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;
 - i. Persons engaged in an activity or event held or managed by the Kansas Legislature;
 - j. Persons engaged in a court-related proceeding held or managed by the Kansas Judiciary; and
 - k. Persons engaged in any lawful activity during which wearing a mask or other face covering is prohibited by law.
4. Definitions:
- a. "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.
 - b. "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.
5. Nothing in this order shall restrict, limit, or supersede the Secretary of Health and Environment's authority to make isolation, quarantine, or other orders restricting movement as necessary to respond to escalating or worsening conditions in any local jurisdiction.
6. Local governments retain authority to issue and enforce equally or more restrictive orders or provisions and retain any authority to issue or enforce isolation or quarantine orders or other orders as necessary to respond to escalating or worsening conditions in any local jurisdiction. Counties may also exercise authority granted by K.S.A. 48-925 as amended by 2020 Special Session House Bill 2016, Sec. 33.
7. As currently permitted pursuant to state law, the Attorney General, county attorneys, and district attorneys enforcing this order should use their discretion and consider the totality of the circumstances as they determine appropriate enforcement actions.

8. In order to more accurately track and assess statewide status of COVID-19 cases, private labs conducting testing for COVID-19 shall report both positive and negative tests to the Kansas Department of Health and Environment.
9. The Four Tribes of Kansas (Iowa Tribe, Kickapoo Nation, Prairie Band Potawatomie Nation, and Sac & Fox Nation) retain any authority to regulate through their respective tribal councils for the health and welfare of their population.
10. This order should be read in conjunction with other executive orders responding to the COVID-19 pandemic that are still in effect and supersedes any contrary provisions of previous orders.

This document shall be filed with the Secretary of State as Executive Order No. 20-52. It shall become effective as of 12:01 a.m. on July 3, 2020, and remain in force until rescinded or until the statewide State of Disaster Emergency extended by House Bill 2016 enacted during the June 2020 special session relating to COVID-19 expires, whichever is earlier. This order may be extended or modified as circumstances dictate.

THE GOVERNOR'S OFFICE

BY THE GOVERNOR _____

DATED _____

Secretary of State

Assistant Secretary of State



STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

DEREK SCHMIDT
ATTORNEY GENERAL

MEMORIAL HALL
120 SW 10TH AVE., 2ND FLOOR
TOPEKA, KS 66612-1597
(785) 296-2215 • FAX (785) 296-6296
WWW.AG.KS.GOV

MEMORANDUM

TO: Kansas Prosecutors and Law Enforcement

FR: Attorney General Derek Schmidt

CC: Governor, Adjutant General, KHP Superintendent, KBI Director

DT: July 2, 2020

RE: Addendum 3 to March 24, 2020, state and local law enforcement duties and authorities memorandum regarding enforcement of orders issued pursuant to the Kansas Emergency Management Act after enactment of 2020 Special Session House Bill 2016 (HB 2016)

This Addendum assists state and local law enforcement and county and district attorneys in determining their duties and authorities related to enforcement of emergency orders of the Governor issued under authority of K.S.A. 48-924 and K.S.A. 48-925 (“emergency orders”).¹ It reflects changes in enforcement authorities and procedures established in statute by House Bill 2016, which was passed by the Legislature on June 4, 2020, signed into law by the Governor on June 8, 2020, and became effective on publication in the Kansas Register on June 9, 2020.² To the extent this Addendum conflicts with provisions of my March 24, 2020, memorandum on state and local law enforcement duties and authorities or Addendums to that Memorandum issued prior to this date, this Addendum replaces provisions of those prior documents.

¹ The statutory changes discussed in this Addendum also apply to local emergency orders entered under authority of K.S.A. 48-932. Except as expressly noted herein, this Addendum does not discuss authorities arising under other statutes.

² HB 2016, § 43; 39 Kan. Reg. 755 (June 9, 2020).

Background

Enactment of House Bill 2016 fundamentally changed numerous authorities related to the issuance and enforcement of emergency orders. On July 2, 2020, the Governor issued Executive Order 2020-52, which requires the wearing of facemasks in most indoor and many outdoor public places (“Mask Order”) to impede the spread of COVID-19. This is the first new emergency order potentially requiring enforcement that has been issued since the House Bill 2016 statutory amendments;³ consequently, this Addendum explains the new procedures and authorities pertinent to law enforcement and county or district attorneys in the context of the Mask Order.⁴

New County-by-County Opt-out Procedure

The initial question that must be asked is whether the Mask Order is in force and effect in a particular county. If it is not, it cannot be enforced in that county. Although the Mask Order itself, like previous COVID-19-related emergency orders, contains no terms limiting its geographical application, state law now establishes a mechanism by which individual counties may effectively opt out of some or all of its requirements. Section 33 of House Bill 2016 authorizes each county commission, pursuant to a statutorily established procedure, to “issue an order relating to public health that includes provisions that are less stringent” than the Mask Order if the commission, after consultation with local health officials, finds that “implementation of the full scope of the provisions in the governor’s executive order are not necessary to protect the public health and safety of the county.”⁵ Thus, if a county commission has exercised this new statutory authority and issued a less-stringent order, then the more-stringent aspects of the Mask Order are not in force and effect in that county and may not be enforced. The new statute does not establish any time requirement or limitation for a county commission to exercise this opt-out authority.

Violating the Mask Order is a Civil Wrong, Not a Crime

Section 36 of House Bill 2016 repealed the criminal penalties found in K.S.A. 48-939 that previously attached to violations of an emergency order and replaced them with civil penalties or injunctive relief that may be ordered by a court in a lawsuit filed by the county or district attorney.⁶ Thus, violation of the Mask Order is now a civil violation and

³ Other emergency orders have been issued since the statutory change, but they either were extending previous orders or were of a nature that the role of law enforcement and county or district attorneys in their enforcement were not called into question.

⁴ Although this Addendum focuses on the Mask Order just issued, the procedures and authorities it describes apply similarly to other emergency orders going forward.

⁵ Codified at K.S.A. 48-925(h). The new law further requires that the board of county commissioners include in its order “all other relevant findings to support” its decision. This provision remains in effect through January 25, 2021, then reverts to prior law.

⁶ Under the revised K.S.A. 48-939, the attorney general also may file a civil enforcement action. Because this Addendum provides assistance to law enforcement and to county and district attorneys, references to the attorney general are omitted in the Addendum’s text. In general, it is the intent of

not a crime;⁷ consequently, the authorities and procedures ordinarily available to law enforcement officers to enforce criminal laws may not be used to enforce the Mask Order. For example, a law enforcement officer may not arrest a person for violating the Mask Order.⁸ Nor may an officer conduct an investigative stop to enforce the Mask Order.⁹ And no statute authorizes a law enforcement officer to issue a citation or to take any similar action for violation of the Mask Order.

In a broad sense, the House Bill 2016 amendments fundamentally shifted from the state's more than 8,000 law enforcement officers to the 105 county and district attorneys the discretion to *determine in the first instance* whether to commence enforcement of the Mask Order. In that sense, the Mask Order now is to be civilly enforced in a manner much more similar to civil abatement of a common nuisance¹⁰ or to the Kansas Consumer Protection Act¹¹ and not as crimes. In general, citizens who violate the Mask Order may be subject to civil penalty or injunction related to their behavior only *after* a judge has entered an order to that effect in an enforcement lawsuit filed by the county or district attorney. The county or district attorney, not a law enforcement officer on the street, is the first authority to determine whether any enforcement action should be commenced in any individual circumstance. Enforcement policies, procedures and priorities lie with the county or district attorney, not with law enforcement agencies.¹² Therefore, law enforcement agencies are strongly encouraged to determine what assistance the county or district attorney may request from them in preparing and bringing any civil enforcement actions. Because authority to “enforce[]”¹³ violations of the Mask Order now rests with the county or district attorney, each county or district attorney is advised to determine the manner in which he or she intends to receive complaints of violations of the Mask Order; how enforcement discretion will be exercised;¹⁴ the propriety of bringing

the attorney general to defer enforcement decisions to the local county or district attorney absent any extraordinary circumstance.

⁷ Violating the Mask Order is not a crime. Of course, being maskless may be a relevant *fact* that tends to establish an element of *other* crimes that prohibit conduct beyond merely not wearing a mask. For example, if a private business requires people who enter its premises to wear a mask and a maskless person refuses to leave after being properly asked, the refusal to leave may constitute criminal trespass. *See* K.S.A. 21-5808(a)(1)(A). There are other conceivable circumstances in which being maskless may be a relevant *fact* in proving a criminal threat, *see* K.S.A. 21-5415(a)(2), endangering the food supply, *see* K.S.A. 21-6317, or some other crime. Similarly, violation of lawful orders issued under authority of other statutes, such as orders of a local health officer, still may be crimes under provisions of those statutes.

⁸ *See* K.S.A. 22-2202(d) (defining “arrest” as related to “the commission of a crime”); *see also* K.S.A. 22-2401 (authorizing arrest only in relation to crimes).

⁹ *See* K.S.A. 22-2402 (authorizing investigative stop only in relation a crime).

¹⁰ *See* K.S.A. 22-3902.

¹¹ *See* K.S.A. 50-623 *et seq.*

¹² County and district attorneys are not required to wait for a violation to occur but may seek court-ordered injunctive relief “against a person who has violated, is violating or is otherwise likely to violate” the Mask Order. *See* K.S.A. 48-939(c) as amended by Section 36 of House Bill 2016.

¹³ K.S.A. 48-939(b) as amended by Section 36 of House Bill 2016.

¹⁴ It is possible that a county or district attorney will exercise discretion to adopt different approaches to different types of violations. For example, a restaurant that refuses to require its food-

an enforcement action in any individual case;¹⁵ the manner in which investigation of potential violations should be conducted; and similar types of enforcement issues.

Because of this changed enforcement structure, individual law enforcement agencies and officers (as appropriate in each jurisdiction) are strongly encouraged to consult with their local county or district attorney to determine how he or she intends to exercise the new civil enforcement authority granted by Section 36 of House Bill 2016. Although enforcement of the Mask Order is now the responsibility of the county or district attorney, law enforcement agencies should consider adopting procedures or otherwise giving guidance to their officers who encounter violations of the Mask Order to help ensure a consistent approach for citizens throughout each county. While enforcement may be initiated only by the county or district attorney, law enforcement officers continue to have the same abilities as any citizen to report potential violations to the county or district attorney, and officers also remain free to courteously and professionally encourage citizens to comply with the Mask Order (without effecting a stop for that purpose). Thus, officers should be given guidance from law enforcement agency leadership, in consultation with the county or district attorney, on these sorts of matters.

service workers to wear masks while serving food to the public in violation of the Mask Order may be a priority for enforcement while a private citizen walking through an office hallway in a business not open to members of the public may not.

¹⁵ For a more thorough discussion of the county or district attorney's duty to assess the lawfulness of an emergency order before undertaking enforcement, see Attorney General Opinion 2020-6. Be mindful, however, that the assessment in that Opinion arose in the context of potential criminal prosecution, and the bar for a lawfulness assessment may be somewhat lower in the civil enforcement actions now authorized by House Bill 2016. In addition, a county or district attorney should consider potential constitutional or other legal concerns that may arise from applying the Mask Order in particular situations; for example, for the government to threaten a civil penalty of up to \$2,500 or otherwise to compel a person to purchase and wear a mask as a precondition for entering a polling place to cast a vote may present concerns about unlawful voter suppression.