

STATE OF NEW YORK
COUNTY OF ROCKLAND: DEPARTMENT OF HEALTH

In the Matter of

THE COVID-19 Pandemic of 2020

Pursuant to the Public Health Law, the New York
State Sanitary Code and the Rockland County
Sanitary Code

**COMMISSIONER'S AMENDED STANDING
FACE COVERING ORDER
FOR ALL SCHOOLS, SCHOOL-AGE CHILD
CARE PROGRAMS, UNIVERSITIES,
COLLEGES, ADULT LEARNING
PROGRAMS AND ALL OTHER
EDUCATIONAL INSTITUTIONS IN ALL
EDUCATIONAL SETTINGS AS WELL AS
SCHOOL BUSES AND OTHER SCHOOL
TRANSPORTATION VEHICLES IN
ROCKLAND COUNTY**

WHEREAS, The Coronavirus Disease 2019 (COVID-19), formerly known as the 2019-Novel Coronavirus (2019-nCoV), is an infection associated with fever and signs and symptoms of pneumonia or other respiratory illness, which appears to be transmitted from person to person predominantly through droplet transmission and, if spread in the population, could have significant public health consequences; and

WHEREAS, COVID-19 is believed to have emerged as a human pathogen in China in December 2019 and as of October 16, 2020, there are 39,126,112 confirmed cases of COVID-19, and additional suspected and/or probable cases, of COVID-19 reported to the World Health Organization from 189 countries, including Canada and the United States, with 1,100,877 deaths reported; and

WHEREAS, To date, there are a total of 17,063 cases of COVID-19 that have been confirmed in Rockland County, which has increased by 16.7% between September 15, 2020 and October 15, 2020; and

WHEREAS, There presently is no vaccine for COVID-19; and

WHEREAS, On January 30, 2020, the World Health Organization designated the COVID-19 outbreak as a Public Health Emergency of International Concern, advising that further cases may appear in any country; and

WHEREAS, On January 31, 2020, Health and Human Services Secretary Alex M. Azar II declared a public health emergency for the entire United States to aid the nation's healthcare community in responding to COVID-19; and

WHEREAS, On February 1, 2020, pursuant to 10 NYCRR § 2.1(a), Dr. Howard A. Zucker, as Commissioner of Health of the State of New York, designated 2019-Novel Coronavirus (2019-nCoV), now known as Coronavirus Disease 2019 (COVID-19), as a communicable disease under the State Sanitary Code; and

WHEREAS, On February 6, 2020, the New York State Public Health and Health Planning Council ratified the designation of 2019-Novel Coronavirus (2019-nCoV), now known as Coronavirus Disease 2019 (COVID-19), as a communicable disease under the New York State Sanitary Code through the adoption of emergency regulations amending 10 NYCRR § 2.1; and

WHEREAS, On March 7, 2020, Governor Andrew M. Cuomo, issued an Executive Order declaring a State disaster emergency and that COVID-19 poses a threat to the health and welfare of New York State residents and visitors, with subsequent Executive Orders being issued since aimed to further limit the spread of COVID-19 and/or mitigate the impact thereof; and

WHEREAS, On March 9, 2020, emergency regulations amending Part 2, to clarify, among other things, the authority local health departments have to control the spread of disease, including through isolation and quarantine orders, were adopted by the New York State Public Health and Health Planning Council; and

WHEREAS, On March 13, 2020, President Donald J. Trump declared a national emergency pursuant to Section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act; and

WHEREAS, On April 12, 2020, Governor Cuomo issued Executive Order 202.16, directing that, effective at 8:00 p.m. on April 15, 2020, “[f]or all essential businesses or entities, any employees who are present in the workplace shall be provided and shall wear face coverings when in direct contact with customers or members of the public...”; and

WHEREAS, On April 15, 2020, Governor Cuomo issued Executive Order 202.17, directing that, effective at 8:00 p.m. on April 17, 2020, “any individual who is over age two and able to medically tolerate a face-covering shall be required to cover their nose and mouth with a mask or cloth face-covering when in a public place and unable to maintain, or when not maintaining, social distance”; and

WHEREAS, On April 16, 2020, Governor Cuomo issued Executive Order 202.18, directing that, effective at 8:00 p.m. on April 17, 2020, “[a]ny person utilizing public or private transportation carriers or other for-hire vehicles, who is over age two and able to medically tolerate a face covering, shall wear a mask or face covering over the nose and mouth during any such trip; any person who is operating such public or private transport, shall likewise wear a face covering or mask which covers the nose and mouth while there are any passengers in such vehicle...”; and

WHEREAS, On May 28, 2020, Governor Cuomo issued Executive Order 202.34, directing that “[b]usiness operators and building owners, and those authorized on their behalf shall have the discretion to ensure compliance with the directive in Executive Order 202.17 ..., including the discretion to deny admittance to individuals who fail to comply with the directive in Executive Order 202.17 or to require or compel their removal if they fail to adhere to such directive ...”; and

WHEREAS, Emergency regulations were issued, pursuant to 10 NYCRR § 66-3.2, requiring face-coverings in public places and in public or private transportation effective July 9, 2020; and

WHEREAS, These regulations provide:

(a) Any person who is over age two and able to medically tolerate a face-covering shall be required to cover their nose and mouth with a mask or face-covering when in a public place and unable to maintain, or when not maintaining, social distance.

(b) Any paying passenger of a public or private transportation carrier or other for-hire vehicle, who is over age two and able to medically tolerate a face covering, shall wear a mask or face-covering over the nose and mouth during any such trip; any employee of such public or private transportation carrier who is operating such public or private transport, shall likewise wear a mask or face-covering which covers the nose and mouth while there are any paying passengers in such vehicle.

(c) Any employee who is present in the workplace shall be provided and shall wear a mask or face-covering when in direct contact with customers or members of the public, or when unable to maintain social distance. Businesses must provide, at their expense, such face coverings for their employees.

(d) Business operators and building owners, and those authorized on their behalf shall deny admittance to any person who fails to comply with this section and shall require or compel such persons' removal. Provided, however, that this regulation shall be applied in a manner consistent with the Federal American with Disabilities Act, New York State or New York City Human Rights Law, and any other applicable provision of law.

(e) For purposes of this section:

(i) Face-coverings shall include, but are not limited to, cloth masks (e.g. homemade sewn, quick cut, bandana), surgical masks, N-95 respirators, and face shields.

(ii) A person shall be considered as maintaining social distancing when keeping at least six feet distance between themselves and any other persons, other than members of such persons' household; and

WHEREAS, On August 24, 2020, Dr. Zucker declared that an Imminent Threat to Public Health (ITPH) exists throughout New York State, pursuant to Public Health Law § 621; and

WHEREAS, The New York State Department of Health issued Interim Guidance for In-Person Instruction at Pre-K to Grade 12 Schools During the COVID-19 Public Health Emergency, as of August 26, 2020, which states that “an acceptable face covering ... is strongly recommended to be worn by all individuals at all times but is required to be worn any time or place that individuals cannot maintain appropriate social distancing,” “that individuals must wear acceptable face coverings at all times on school buses (e.g., entering, exiting, and seated)” and that “[f]ace coverings are strongly recommended at all times, except for meals and instruction with appropriate social distancing. However, Responsible Parties can require face coverings at all times, even during instruction; and it is strongly recommended in areas with higher rates of COVID-19 community infection”; and

WHEREAS, The New York State Reopening New York Guidelines for In-Person Instruction at Pre-K to Grade 12 Schools also contains mandatory rules regarding face coverings, including the following:

If social distancing is not possible, individuals must wear acceptable face coverings; excluding students who are unable to medically tolerate a face covering....

Be prepared to don a face covering if another person unexpectedly cannot socially distance; for this reason, individuals – including students – must wear face coverings in common areas, such as entrances/exits, lobbies, and when traveling around the school....

Students must wear a face covering to ride the school bus and wear it while entering, exiting, and seated; and

WHEREAS, The New York State Reopening New York Higher Education Guidelines likewise contain mandatory rules regarding face coverings, including:

Any time individuals come within 6 ft. of another person who does not reside in the same residence (i.e., roommate), acceptable face coverings must be worn. This provision should not be construed to require physical distancing among roommates or to require face coverings be worn while inside an individual’s residence.

Advise employees, students, and visitors that they are required to wear face coverings in common areas or situations where social distancing may be difficult to maintain, such as riding in elevators, entering/exiting classrooms or student centers, and traveling around the campus; and

WHEREAS, Section 2100 of the Public Health Law mandates that all local health officers, being Commissioners of Health and Public Health Directors, as the case may be, of County Health Departments, guard against the introduction of such communicable diseases as are designated in the State Sanitary Code, by the exercise of proper and vigilant medical inspection and control of all persons and things infected with or exposed to such diseases; and

WHEREAS, Pursuant to New York State Public Health Law § 324(e), the Rockland County Charter, the Rockland County Administrative Code and the Rockland County Sanitary Code, the Commissioner of Health of the Rockland County Health District and the Commissioner of the Rockland County Department of Health (RCDOH) (the “Commissioner”) is authorized to enforce the New York State Public Health Law and its associated regulations; and

WHEREAS, Pursuant to New York State Public Health Law § 1300 et seq., the New York State Sanitary Code, 10 NYCRR Part 8 and Article 1.17.0 of the Rockland County Sanitary Code, the Commissioner shall investigate and order the suppression, removal and abatement of all nuisances and conditions detrimental to life and health found to exist in the health district; and

WHEREAS, The Commissioner has determined that persons infected with or exposed to persons infected with COVID-19 pose an imminent and significant threat to public health and safety and are a public health nuisance; and

WHEREAS, The Commissioner has determined that the use of face coverings, as defined in 10 NYCRR § 66-3.2(e)(i) (discussed above), coupled with social distancing, as defined in 10 NYCRR § 66-3.2(e)(ii) (discussed above), will help to stop the spread of COVID-19 in Rockland County;

NOW, THEREFORE, by virtue of the authority vested in me by § 2100 of the New York State Public Health Law, New York State Public Health Law § 1300 et seq., 10 NYCRR § 2.25(f), 10 NYCRR Part 8 and Article 1.17.0 of the Rockland County Sanitary Code, as Commissioner, I do hereby:

DECREE, That the presence of children and students without face coverings in Rockland County in or on all (a) public and private, secular and non-secular schools, including those in residential settings, schools that, in whole or in part, serve grades Kindergarten through 12, including school-age child care programs, before school and after school programs and children's camps, universities, colleges, trade schools, adult learning programs and all other educational facilities and (b) school buses or other school transportation vehicles poses an imminent and significant threat to the public health and safety of the residents of and visitors to the County and constitutes a public health hazard. The lack of face coverings creates an unnecessary and avoidable risk of spreading COVID-19 in the County and is therefore a public health nuisance;

ORDER that, effective immediately:

- A. All public and private schools, secular and non-secular, situated in Rockland County, that, in whole or in part, serve grades Kindergarten through 12, including school-age child care programs, before school and after school programs and children's camps, are responsible to require and ensure that all students, faculty, staff and visitors cover their noses and mouths with acceptable face coverings at all times, as defined in 10 NYCRR § 66-3.2(e)(ii) (discussed above) including during instruction and when in common areas and dining facilities, but it shall be a defense to the charge, to be proven by the person or entity accused, as described in section (E), (F), or (H), that they are engaging in a mask break, eating meals, and during rigorous physical activity, as explained below; and
- B. All universities, colleges, trade schools, adult learning programs and all other educational facilities, public and private, secular and non-secular, situated in Rockland County, are responsible to require and ensure that all students, faculty, staff and visitors cover their noses and mouths with acceptable face coverings at all times, other than during approved mask breaks where students can maintain social distancing, as defined in 10 NYCRR § 66-3.2(e)(ii) (discussed above), including during instruction, when in common areas in school buildings, dormitories or other student housing and when in dining facilities, but it shall be a defense to the charge, to be proven by the person or entity accused, as described in section (E), (F), or (H), that they are engaging in a mask break, eating meals, and during rigorous physical activity, as explained below; and; and

- C. All school transportation companies serving any entity described in sections (A) or (B), above, and operating in Rockland County are responsible to require and ensure that all children and students enrolled in grades Kindergarten through 12, faculty and staff cover their noses and mouths with acceptable face coverings at all times while on or in school buses or other school transportation vehicles, including when the children, students, faculty and staff are entering, exiting and seated on the vehicle; and
- D. Acceptable face coverings are defined in 10 NYCRR § 66-3.2(e)(i) (discussed above). However, under this Commissioner’s Order, quick cut masks, bandanas, neck gaiters and single ply cloth or material masks are not permitted. In addition, face shields without acceptable face coverings underneath are not permitted; and
- E. Face coverings may be removed during rigorous physical activity if the teacher determines that wearing a face covering may be dangerous to the child or student. However, during such activity, at least twelve (12) feet distance must be maintained between the children or students and any other person. The entity charged has the burden to prove this defense; and
- F. If any student, faculty, staff member or visitor is medically unable to tolerate a face covering, the entities and companies described in sections (A), (B), or (C), above must require a note from the person’s physician, certifying that the person is medically unable to tolerate a face covering and providing specifically the safety measures required to protect the person from contracting COVID-19 or transmitting it to others. Such notes must be kept on the person or, in the case of minors, on file with the educational institution or transportation company. The notes shall be available to RCDOH upon request. The entity charged has the burden to prove this defense; and
- G. If a child, student, faculty, staff member or visitor is observed without a face covering in any program, school or vehicle regulated under this Commissioner’s Order, that shall constitute a violation of this Commissioner’s Order, each child in violation of the standards set forth herein may be considered a separate violation; and
- H. It shall be a defense to this Commissioner’s Order if the child, student, faculty, staff member or visitor was not wearing a face covering in compliance with the plan submitted to and approved by the New York State Department of Health and the New York State Education Department or, if applicable, the State University of New York (SUNY). The entity charged has the burden to prove this defense; and be it further

ORDERED, That the entities and companies described in sections (A), (B), and (C) above must cooperate with RCDOH public health authorities by providing any information requested related to face coverings including, but not limited to, medical notes, an educational institution’s school plan, etc.; and be it further

ORDERED, That each date upon which any entity or company described in sections (A), (B), and (C) above violates any term of this Order constitutes a separate and distinct violation

subject to a civil penalty not to exceed the sum of two thousand dollars (\$2,000.00) per violation per day; and be it further

ORDERED, That each date upon which any entity or company described in sections (A), (B), and (C) above violates any term of this Order constitutes a separate and distinct violation and is enforceable by criminal prosecution pursuant to New York State Public Health Law §§ 12-b, 12-c and 348, 10 NYCRR § 66-3.5 and Rockland County Sanitary Code § 1.24.0.

ORDERED, That this amended order supersedes the Commission's Standing Face Covering Order dated October 14, 2020 (2020-0083S).

DATED: Pomona, New York
October 16, 2020



PATRICIA S. RUPPERT, DO, MPH, CPE, DABFM, FAAFP
COMMISSIONER OF HEALTH
COUNTY OF ROCKLAND