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## PORTAGE COUNTY FACE COVERING ORDER

WHEREAS, Portage County remains in the midst of the COVID-19 pandemic; and

WHEREAS, the best way to continue to ease the strain on our hospital systems is to decrease the number of COVID-19 patients needing hospitalization. We can continue to accomplish this by diligently following these best practices during the pandemic: limit in-person gatherings, diligently wash hands, practicing physical distancing, and wear a face covering when you must be around other people outside your household; and

WHEREAS, although COVID-19 vaccination distribution is continuing across the State, it will be some time before upwards of 80% of the general population is vaccinated and some degree of herd immunity is achieved; and

WHEREAS, ongoing health recommendations remain of significant importance to reduce the spread of COVID-19; and

WHEREAS, on March 31, 2021, the Wisconsin Supreme Court issued a decision in *Fabick v. Evers*. The decision held that the Governor Evers exceeded his statutory authority when he issued successive emergency declarations that were based on the same underlying emergency. One impact of the *Fabick* decision is that Order #105 and previous orders were declared invalid;

NOW, THEREFORE BE ADVISED, that this Order makes the following critical health recommendations:

### 1. DEFINITIONS.

- a. "Enclosed space" means a confined space open to the public where individuals congregate, including but not limited to taxis, public transit, ride-share vehicles, and any other confined space, whether indoors or outdoors, where it is not possible to maintain physical distancing.
- b. "Face covering" means a piece of cloth or other material that is worn to cover the nose and mouth completely. A "face covering" includes but is not limited to a bandana, a cloth face mask, a disposable or paper mask, a neck gaiter, or a religious face covering. A "face covering" does not include face shields, mesh masks, masks with holes or openings, or masks with vents, except when double-masking.
- c. "Physical distancing" means maintaining at least six feet of distance from other individuals who are not members of your household or living unit.

2. FACE COVERING STRONGLY RECOMMENDED. Every individual, age five and older, should wear a face covering if both of the following apply:
  - a. The individual is indoors or in an enclosed space, other than at a private residence, and;
  - b. Another person or persons who are not members of the individual's household or living unit are present in the same room or enclosed space. Face coverings are also strongly recommended in all other settings, including outdoors when it is not possible to maintain physical distancing.
  
3. EXCEPTIONS.
  - a. Individuals who are otherwise recommended to wear a face covering may remove the face covering in the following situations:
    - i. While eating or drinking.
    - ii. When communicating with an individual who is deaf or hard of hearing and communication cannot be achieved through other means.
    - iii. While obtaining a service that requires the temporary removal of the face covering, such as dental services.
    - iv. While sleeping.
    - v. While swimming or on duty as a lifeguard.
    - vi. While a single individual is giving a religious, political, media, educational, artistic, cultural, musical, or theatrical presentation for an audience, the single speaker may remove the face covering when actively speaking. While the face covering is removed, the speaker must remain at least 6 feet away from all other individuals at all times.
    - vii. When engaging in work where wearing a face covering would create a risk to the individual, as determined by government safety guidelines.
    - viii. When necessary to confirm the individual's identity, including when entering a bank, credit union, or other financial institution.
    - ix. When federal or state law or regulations prohibit wearing a face covering.
  
  - b. In accordance with current CDC guidance, the following individuals are exempt from the face covering recommendations in Section 2:
    - i. Children between the ages of 2 and 5 are encouraged to wear a mask when physical distancing is not possible. The CDC does not recommend masks for children under the age of 2.
    - ii. Individuals who have trouble breathing.
    - iii. Individuals who are unconscious, incapacitated, or otherwise unable to remove the face covering without assistance.
    - iv. Individuals with medical conditions, intellectual or developmental disabilities, mental health conditions, or other sensory sensitivities that prevent the individual from wearing a face covering.
    - v. Incarcerated individuals. The Wisconsin Department of Corrections shall continue to comply with COVID-19 protocols to ensure the health and safety of its staff and individuals in its care. Local governments are strongly encouraged to create or continue COVID-19 protocols to ensure the health and safety of their staff and individuals in their care.

4. **LEGISLATURE AND JUDICIARY.** State facilities or offices under the control of the Wisconsin State Legislature or the Wisconsin Supreme Court are exempt from this Order. The Wisconsin State Legislature and the Wisconsin Supreme Court may establish guidelines for face coverings that are consistent with the specific needs of their respective branches of government.

**APPLICABILITY.** The recommendations in this Order are designed to promote and protect the health and safety of everyone in Portage County and to minimize the transmission and spread of COVID-19.

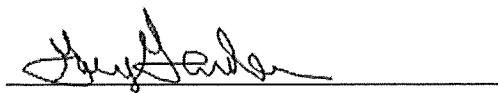
Although this Order makes recommendations as opposed to mandates, existing state laws (such as Wis. Admin. Code § DHS 145.06) authorize certain local health officials, including Portage County's Health Officer, and the courts to take steps designed to prevent the spread of communicable diseases, including COVID-19. Those existing state laws also authorize local health officials and the courts to direct individuals who are known to have or are suspected of having a contagious medical condition which poses a threat to others to follow certain case specific safety protocols. Local health officials and the courts have similar authority with respect to persons who own or supervise property which present a threat of communicable disease transmission, including COVID-19 transmission.

Local health officials are authorized to investigate reports related to communicable diseases which pose a threat to the public. If the investigation shows clear and convincing evidence of public health threats related to communicable disease, local health officials can exercise their discretion to pursue enforcement mechanisms available under the existing state laws outlined above. The degree to which individuals/property owners have followed recommendations like those in this Order will most likely be relevant in such enforcement proceedings.

Directives imposed by local health officials and the courts under existing state laws designed to prevent transmission of communicable diseases must be the least restrictive alternatives that serve to correct the situation at hand in order to protect the public's health.

**Duration.** This order shall become effective immediately. This order shall remain in effect until June 1, 2021, or until revoked or superseded by subsequent order. Portage County will review this order throughout its duration and after 60 days.

It is ordered by the Health Officer of Portage County.



Gary L. Garske, RS, MPH

April 2, 2021

Date

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