

Talking Points Regarding Current Emergency Order Regarding Mask Usage

The current Board Emergency Order regarding public behavior in light of COVID-19 is EO 20-50.

The Order covers the use of facial coverings in retail locations and where social distancing is not possible. It provides that businesses must post signs regarding the fact that masks must be worn and limits groups to 50 if they cannot provide for social distancing.

The Order provides that its enforcement is via a civil infraction which can be imposed by Code Enforcement Officers. At present, based upon action taken by the Governor, fines imposed upon individuals may not be collected. This does not stop the courts from imposing a fine and they have generally been suspending payment until 30 days after the expiration of the Governor's Order, which currently will run as long as the emergency does.

Our emergency orders have been extended with every extension of the state of emergency. This gives the Board the opportunity to determine whether any changes need to be made to the orders or if the orders need to be repealed. It is important that periodically the Board review the order and current evidence and take appropriate action.

We are providing copies of the relevant orders of Governor DeSantis, along with the attachments to EO 20-50. In addition, there are some updates from the CDC on the current science regarding the use of cloth, non-surgical masks to slow the spread of COVID. There is also information from the Mayo Clinic and Johns Hopkins.

A predecessor to this order is currently being litigated. Alachua County's order on facial covering, like all those, which have been challenged around the state, has so far been upheld. We are expecting a ruling from the First District Court of Appeals within the next several weeks on our Order.

The objection to requiring the use of masks generally take one or more of three lines of argument.

1) The science is not conclusive. This argument would require solid double blind empirical evidence to support the use of masks. At present, this does not exist and some ethical issues have been raised regarding it. However, other methods of investigation have been used and are being relied upon by the CDC.

2) The use of a facemask is actually a medical treatment and this violates of the Constitutional right to privacy contained in the Florida Constitution. At present, no case law supports this and the type of case which has been interpreted as involving much more invasive medical procedures which involve one's treatment of oneself and not something used to protect someone else.

3. Making someone wear a facemask is a violation of his or her First Amendment freedom of expression. This argument has not been accepted by the courts up to this point.

If either the second or the third arguments were accepted, it would not necessarily invalidate the order, but increases the burden on the government to show a compelling interest in the use of the facemasks.

RECOMMENDATION: Listen to presentation from Department of Health and consider material in the agenda backup and presentation from County Attorney to determine if E0-50 shall be continued or not.