

ORDINANCE NO. 2-2020

A TEMPORARY EMERGENCY ORDINANCE OF THE BOROUGH OF KUTZTOWN, BERKS COUNTY, PENNSYLVANIA TO REQUIRE THE WEARING OF FACE COVERINGS, SET MAXIMUM GATHERING SIZE, AND OTHER REGULATIONS TO REDUCE THE RISK OF TRANSMISSION OF THE COVID-19 VIRUS.

Legislative History

WHEREAS, the Borough of Kutztown is currently experiencing a pandemic as a result of the sharp and aggressive spread of the COVID-19 virus within the Borough; and

WHEREAS, the state of Pennsylvania has declared that a State of Emergency exists which necessitates behavioral modifications and limitations as expressed herein; and

WHEREAS, the only method, presently, available to slow the rate of infection is to limit exposure; and

WHEREAS, COVID-19 poses a risk of incapacitation and death to those who contract the disease, the measures described herein are an attempt to reduce infection rates, intended to minimize risk to the public health, reduce pressure on healthcare providers and pharmaceutical supplies by lowering the rate and risk of infection; and

WHEREAS, the Federal Government, the Commonwealth Government, the Berks County Government, and the Borough of Kutztown have all issued State of Emergency orders and recommendations, the purpose of the within Ordinance is to clarify what is required going forward during the pandemic period; and

WHEREAS, in order to protect, preserve and promote the health, welfare, and safety for the residents, employees, and visitors to the Borough of Kutztown, Council deems it is necessary and proper to adopt this temporary Ordinance.

NOW THEREFORE, BE IT ENACTED AND ORDAINED by the Council of the Borough of Kutztown, County of Berks, Commonwealth of Pennsylvania, and it is hereby enacted and ordained by the authority of the same as follows:

SECTION 1. Definitions.

“**Business**” includes all commercial, retail, wholesale, professional, and service establishments, whether for profit or not for profit, if members of the public, guests, clients, customers, and/or persons who are not family or household members may enter or otherwise come into contact with owners, operators, or

employees.

“Face Covering” means a clean cloth, fabric, or other soft or permeable material, without holes, that covers both the mouth and nose, including, but not limited to surgical masks, respirators, face shields, handmade or homemade masks, bandanas, neck gaiters, scarves, or wraps made up on tightly woven fabric such as denim or cotton.

“Household” means all persons living in the same dwelling unit. It does not include the residents of separate dwelling units at the same location, such as may be the case at a residence hall, apartment complex, or other multi-unit residence.

“Gathering” means a planned or spontaneous event or function of a group of persons assembled, indoors or outdoors.

“In Contact” means coming within six (6) feet or closer.

“Person or persons” includes all persons not exempted from wearing face coverings or masks in this ordinance. The terms include business employees, as well as customers, visitors, guests, clients and invitees.

SECTION 2. Wearing of Face Coverings.

All persons in the Borough of Kutztown shall be required to wear a Face Covering as set forth herein in Section 2, Paragraphs A through G.

A. Inside any building open to the public, such as, but not limited to, grocery stores, pharmacies, business locations, home improvement stores, retail stores, service establishments, and medical and dental treatment facilities.

B. Inside all municipal and other governmental buildings.

C. On all transport and transit vehicles, including, but not limited to, BARTA bus, rideshare (such as Uber or Lyft) and shuttle vehicles.

D. While waiting to enter any building open to the public, any municipal and other governmental building, or waiting to board any transport or transit vehicle, unless a distance of at least six feet is maintained from any person who is not that person’s family or household member, notwithstanding the prohibition of wait lines outside of municipal or other governmental offices, businesses, including hospitality establishments.

E. When coming into contact with any person who is not that person’s

family or household member, whether indoors or outdoors, including, but not limited to, contact during gatherings, curbside pickup, drive-thru and food truck purchases, deliveries, and service calls.

F. While working in all jobs that entail coming into contact with any member of the public, including, but not limited to, all work involving the preparation or packaging of food and/or beverage unless separated by a physical barrier between the employee and the public.

G. Parents or guardians are responsible for ensuring that minor children, two years of age or older, wear face coverings, unless such children are exempt as set forth herein.

H. Businesses, for the protection of employees and subject to the Americans with Disabilities Act of 1990, as amended, must require their employees to wear face coverings at work in conformance with any existing order issued by the Governor of Pennsylvania or the Pennsylvania Secretary of Health.

SECTION 3. Wearing of Face Coverings, Exceptions.

1. Wearing of face coverings shall not be required under the following circumstances:

A. Persons with a medical condition, mental health condition, or disability that prevents wearing a face covering, provided that said person provides documentation from a licensed medical professional of such medical, mental health, or disability preventing the wearing of a face covering. In the event that the person provides said documentation immediately, or within five days, the citation shall be not be issued.

B. Persons who are hearing impaired, or who are communicating with a person who is hearing impaired, where the ability to see the mouth is essential for communication.

C. 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.

D. Persons who are obtaining a service or treatment involving the nose or face or a medical procedure for which temporary removal of the face-covering is necessary to perform the service.

E. Persons who are seated at a restaurant or other establishment that offers food or beverage service, and all requirements as established by the Pennsylvania

Department of Health are followed.

2. The wearing of face coverings may be advisable, but is not required:
 - A. In personal private vehicles and private homes.
 - B. In private business locations, or in individual private offices, at times when members of the public, clients, customers, guests, or other invitees are not present, as long as there is a distance of at least six feet maintained.
 - C. While participating in recreational physical activities, whether outdoor or indoor when involving 10 people or fewer.
 - D. While with family members and/or members of the same household.

SECTION 4. Limitations on Gathering Size.

Gatherings of persons that are not from the same household shall be limited as follows:

- A. In all housing types, gatherings of more than ten unrelated persons shall be prohibited. Any exception to this limitation requires prior approval through the submission of a Gathering Registration Application to the Borough that could allow for a gathering of no more than 25 persons, provided a Covid-19 mitigation plan is submitted with the application.
- B. Gatherings at or in Borough of Kutztown public parks and other municipal property of more than 100 persons shall be prohibited.
- C. Gatherings in other private commercial property shall be restricted by the limitations established by the Pennsylvania Department of Health.
- D. The gathering size restrictions set forth in the Ordinance shall apply for gatherings both indoors and outdoors on the property.
- E. When the number of household members exceeds the limitations set forth in A. and B. herein, no additional persons shall gather at this property, either indoors or outdoors.
- F. For fraternity and sorority housing types, if the organization provides food service (meal plan) to active fraternity or sorority membership that exceeds the number of household members, the fraternity or sorority may request an exception to the Borough that could authorize all current active members to be gathered at the same time; however, only during the Borough-approved specified meal-time periods.

G. The provisions of this section limiting size of gatherings ONLY applies to residential properties, municipal property, and municipal parks. The provisions of this section limiting size of gatherings shall not apply to non-residential properties or functions or events including private business locations, private offices, public and private schools, religious functions, and events such as weddings, funerals, or protest demonstrations.

H. The restrictions set forth in the entire ordinance shall not apply to PIAA sanctioned sporting events and practices for children in grades Kindergarten through Twelve. The participation in and conduct of these sporting events shall be governed by the PIAA Return to Competition: Individual Sports Considerations Manual.

SECTION 5. Enforcement.

Law enforcement and other public safety, health officers, ordinance enforcement officers, and emergency management personnel charged with the enforcement of this ordinance.

A. Any person found to have violated any mandatory provisions of Sections 2, 3 or 4, of this Ordinance shall be found guilty of a civil infraction, punishable by a fine of no less than \$100 and no more than \$600.

B. The property owner(s) in the case of an owner-occupied property, or the tenants of a rental property where a violation of Section 4 of this Ordinance shall be found guilty of a civil infraction, punishable by a fine of no less than \$100 and no more than \$600.

C. Any business found not requiring their employees to comply with this Ordinance shall be found guilty of a civil infraction, punishable by a fine of \$300. Each day of a continuing violation of this Ordinance shall be considered a separate and distinct offense.

D. In addition to these enforcement measures, repeated violations by a person or business are hereby declared to be a public nuisance, which may be abated by the Borough through all other legal means.

SECTION 6. Severability.

If any subsection, sentence, clause, phrase, or word of this Ordinance or any application of it to any person, structure or circumstance is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, then such holding shall not affect the validity of the remaining portions or applications of this Ordinance.

SECTION 7. Effective Date.

This emergency Ordinance shall take effect immediately upon adoption and shall remain in effect until the Pennsylvania Department of Health, and the Borough of Kutztown rescind their Emergency Declarations or on January 31, 2021, whichever date is earlier.

ENACTED AND ORDAINED as an Ordinance of the Borough of Kutztown, Berks County, Pennsylvania this 11th day of September, 2020.

BOROUGH OF KUTZTOWN

By: _____

Kevin J. Snyder, President of the Borough Council

Attest: _____

Gina M. Wiand, Secretary of the Borough

Approved as an Ordinance this 11th day of September, 2020.

James Schlegel, Mayor