

# PROPOSED

## PUBLIC HEALTH ORDER OF THE JOHNSON COUNTY LOCAL HEALTH OFFICER

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### *Applicable within the entirety of Johnson County, Kansas*

This Public Health Order is issued on March 25, 2021 and is effective the 26<sup>th</sup> day of March 2021, at 12:01 A.M. to slow the spread of COVID-19 in Johnson County, Kansas pursuant to the authority provided in K.S.A. 65-119, K.S.A. 65-202 as amended by 2020 Special Session House Bill No. 2016, and other applicable laws or regulations.

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WHEREAS, the Local Health Officer is authorized and required, pursuant to K.S.A. 65-119 and K.S.A. 65-202 as amended by 2020 Special Session House Bill No. 2016 (“K.S.A. 65-202”), to immediately exercise and maintain supervision over known or suspected cases of any infectious or contagious disease during its continuance, and to issue orders seeing that all such cases are properly handled; and

WHEREAS, the Local Health Officer is appointed by the Board of County Commissioners of Johnson County pursuant to K.S.A. 65-201 and is authorized, pursuant to K.S.A. 65-119(a), to prohibit public gatherings when necessary for the control of any and all infectious or contagious diseases, and to use all known measures to prevent the spread of any infectious, contagious, or communicable disease pursuant to K.S.A. 65-202; and

WHEREAS, the United States Department of Health and Human Services declared a public health emergency for COVID-19 beginning January 27, 2020, with now more than 29,613,017 cases of the illness and more than 539,038 deaths as a result of the illness across the United States; and

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

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

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. § 5121-5207 (the “Stafford Act”) declared that the COVID-19 outbreak in the United States constitutes a national emergency beginning March 1, 2020; and

WHEREAS, as of this date, in Kansas there have been 300,125 reported positive cases of COVID-19 spread among all 105 counties, including 4,850 deaths; and

WHEREAS, on March 19, 2020, the Board of County Commissioners of Johnson County issued a state of local disaster emergency declaration, which was renewed and extended on May 28, 2020, and which remains in place at the time of this Order; and

WHEREAS, COVID-19 is a respiratory disease that spreads easily from person to person and may result in serious illness or death; and

WHEREAS, COVID-19 has resulted in 43,991 reported positive cases of COVID-19 in Johnson County and the deaths of 638 Johnson County residents; and

WHEREAS, the spread of COVID-19 endangers the health, safety, and welfare of persons and property within Johnson County, Kansas; and

WHEREAS, to reduce the spread of COVID-19, measures that are recommended and considered effective by the Centers for Disease Control and Prevention (“CDC”) include, among other measures, avoiding close contact with other people and covering one’s mouth and nose with a cloth face cover when in public settings; and

WHEREAS, the increased spread of COVID-19 also presents a serious threat to the continued effective operation of the local economy within Johnson County; and

WHEREAS, wearing a mask or other whole face covering in public venues reduces transmission of the virus, helps keep our businesses open and our economy running, and gets and keeps children in school; and

WHEREAS, the Kansas Governor’s Executive Orders 20-52 and 20-68, requiring the wearing of masks or other face coverings in public, expire on March 31, 2021; and

WHEREAS, wearing a face covering is an effective means to protect each other and mitigate the spread the of COVID-19; and

WHEREAS, continuation of mandatory use of masks or face coverings in public settings is necessary to promote and secure the health, safety and welfare of Johnson County; and

WHEREAS, the intent of this Order is not to deprive any person or entity of any rights protected by the United States Constitution, the Kansas Constitution, or any other law, but merely to set forth restrictions which would best protect Johnson County residents against the community spread of COVID-19; and

WHEREAS, there are certain activities where the wearing of masks and face coverings is exempted pursuant to the terms of this Order where customers may be in the proximity of others for extended periods of time (such as when customers may be eating or drinking), which means such activities present a heightened risk of a person infected with COVID-19 transmitting it to another person; and

WHEREAS, on November 13, 2020, the Johnson County Board of Health issued Public Health Order No. 002-20, limiting the size of public gatherings, ensuring physical distancing, and placing certain other restrictions on activities and businesses to slow and reduce the spread of COVID-19 in the County; and

WHEREAS, Public Health Order No. 002-20 has been extended and now expires on March 31, 2021; and

WHEREAS, while the number of positive cases and hospitalizations is trending downward in Johnson County, COVID-19 remains a serious threat to the health, safety and welfare of Johnson County; and

WHEREAS, new variants of COVID-19 are emerging that are more contagious and virulent than the initial strain of COVID-19; and

WHEREAS, approximately twenty-five percent (25%) of Johnson County residents eligible for the vaccines have been vaccinated against COVID-19 and Johnson County has entered Phases 3 and 4 of the Kansas Department of Health and Environment's Vaccination Prioritization Plan; and

WHEREAS, the majority of Johnson County residents have yet to be vaccinated against COVID-19; and

WHEREAS, Johnson County residents are strongly encouraged to be vaccinated against COVID-19 when they are eligible under the Kansas Department of Health and Environment's Vaccination Prioritization Plan; and

WHEREAS, wearing face masks and maintaining physical distancing will protect the health of Johnson County residents while they are awaiting vaccinations; and

WHEREAS, the recent plateau in COVID-19 cases in parts of the United States advises against lowering COVID-19 restrictions such as face masks and physical distancing;

WHEREAS, the CDC continues to recommend that all unvaccinated individuals, as well as vaccinated individuals while visiting with certain unvaccinated persons, wear masks, maintain physical distance, and practice other prevention measures; and

WHEREAS, for the aforementioned and other reasons, and in recognition and furtherance of the County's responsibility to provide for and ensure the health, safety, security, and welfare of the people of Johnson County, requiring that masks or other face coverings be worn in public, ensuring physical distancing, and placing certain other restrictions on activities are all measures that can be taken to slow and reduce the spread of COVID-19.

NOW, THEREFORE, BE IT ORDERED by the Johnson County Local Health Officer, pursuant to the above authorities that:

**Section I. Social Distancing Provisions.**

1. Individuals within a public space shall maintain 6 feet of physical distancing from other individuals, unless such individuals reside together, or an exception stated within Section I.3. of this Order applies. "Public space" means any indoor or outdoor space or area that is open to the public but does not include private residential property or private offices or workplaces that are not open to customers or public visitors.

2. Within a public space where a business or organization operates, such business or organization shall ensure that 6 feet of physical distancing is maintained between individuals and

groups of individuals, unless such individuals reside together, or an exception stated within Section I.3. of this Order applies.

3. Exceptions to the 6 feet of physical distancing requirements stated within Sections I.1. and I.2. shall include:

a. Businesses and organizations that provide services that intrinsically require staff from the business or organization to be within less than 6 feet from one another or the customer, such as dentists, hair salons, barber shops, nail salons, chiropractors, massage services, tattoo parlors, medical services providers, and similar services, provided that staff wear protective face coverings as directed by Section III of this Order.

b. Businesses where tasks completed by employees require such employees to work within 6 feet of one another.

c. While seated at a restaurant, bar, night club, or other business licensed to sell alcohol for on-premises consumption, individuals at the same table may be located within 6 feet of one another. Also, all tables and individuals seated at a table shall be located at least 6 feet from any other tables and individuals seated at such tables. Individuals seated in a bar area shall be located at least 6 feet from any other individuals seated in that area. Congregating of standing individuals in bar or waiting areas is prohibited.

d. Persons who have one or more physical barrier(s) between them and any other persons. "Physical barriers" shall be defined as a partition or wall at least 3' in height above the head of the persons so separated, and impervious to air circulation, e.g. a Plexiglas shield

4. The following are exempt from the limitations in Section I. of this Order, and are instead encouraged to maintain physical distancing as much as is feasible and to maintain 6 feet of physical distance between individuals who do not reside together, when feasible:

- a. Religious institutions, facilities and activities;
- b. Election polling places;
- c. Licensed childcare facilities;
- d. Schools and activities within the purview of school's governing body;
- e. Court facilities;
- f. Wedding and funeral ceremonies;
- g. Public transportation;
- h. Health care, hospitals, and medical facilities;
- i. Law enforcement, jails, and correctional facilities;
- j. Long term care and assisted living facilities; and
- k. Public protest activities.

## **Section II. Provisions Specific to Certain Activities.**

1. Nail salons, barber shops, hair salons, tattoo parlors, dentists and other personal services businesses where 6 feet of physical distancing is not feasible must only serve customers for pre-scheduled appointments or online or text message check-in.

### **Section III. Wearing of Masks or Other Face Coverings**

1. Any person within Johnson County shall wear 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, vaccination site, COVID-19 testing site, veterinary clinic, or blood bank (unless otherwise directed by an employee or healthcare provider);
- c. Waiting for or riding on public transportation or while in a taxi, private car service, or ride-sharing vehicle; and
- 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.

2. All businesses or organizations in Johnson County 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. Customers, members, visitors, or members of the public are in a facility managed by the business or organization; or
- d. 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 individuals are exempt from wearing masks or other face coverings pursuant to the provisions of this order:

- a. Persons age five years or under are exempt from wearing masks. 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 deaf or hard of hearing, or communicating with a person who is deaf or hard of hearing, 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 any other tables and individuals seated at such tables;
- 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 face covering;
- i. Persons engaged in a court-related proceeding held or managed by the Kansas Judiciary except as directed or required by the court or Kansas Judiciary;
- j. Persons engaged in any lawful activity during which wearing a face covering is prohibited by law; and
- k. Persons engaged in religious services, ceremonies or activities.

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. 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" is defined in Section I.1. of this Order.

**Section IV. Lawful Order.** This Order is a lawfully issued order pursuant to K.S.A. 65-202 and K.S.A. 65-119(a) and is also a "public health directive" as identified within KSA 60-5502. Individuals and organizations within Johnson County are required to comply with this Order. Failure of a business or organization to comply with this Order is a violation of Board of County Commissioners Resolution No. 108-20.

**Section V. Review by Board of County Commissioners.** Pursuant to K.S.A. 65-201 and K.S.A. 65-202, the Board of County Commissioners may review, amend, or revoke this Order.

**Section VI. Severability.** If any portion of this Order is found or determined to be invalid, such finding, or determination shall only affect the portion of the Order that is at issue and shall not affect the validity of the remainder of the Order.

**Section VII. Effective Date; Conclusion.** This Order is effective at 12:01 A.M. on Friday, the 26th day of March 2021, and shall remain in effect through 11:59 P.M. on Friday, the 30<sup>th</sup> day of April 2021, unless it is amended, revoked, or replaced.

IT IS SO ORDERED THIS 25th day of March 2021.

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Joseph LeMaster, M.D.  
Johnson County Local Health Officer

APPROVED BY:

BOARD OF COUNTY COMMISSIONERS  
OF JOHNSON COUNTY, KANSAS

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Ed Eilert, Chairman

DATE: March 25, 2021

ATTEST:

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Lynda Sader  
Deputy County Clerk

APPROVED AS TO FORM:

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Cynthia Dunham  
Interim Chief Counsel