

A Local Law Requiring the Use of Face Masks and Face Coverings to Prevent the Spread of Infectious Diseases

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Town of
New Castle

Purpose of the Proposed Local Law

- ▶ The Town has determined the health risks and economic impacts associated with COVID-19 require enforcement mechanisms to protect the public health, safety and welfare of its residents. This local law establishes mandatory requirements regarding the use of face masks and face coverings on public and private property in the Town of New Castle as well as penalties for any violation of the Town's face mask law.



Case Law Supports Town's Authority

- ▶ The United States Supreme Court has “recognized the authority of a state to enact quarantine laws and health laws of every description . . .” when considering adoption of laws that protect public health and safety. *Jacobson v. Commonwealth of Ma.*, 197 U.S. 11, 12 (1905)
- ▶ *Jacobson* demonstrates that when liberty rights are subordinate to public health, a court will find those rights were not infringed.



Challenges To Face Mask Requirements During the COVID-19 Pandemic

- ▶ Challenges during the Covid-19 pandemic to a Government's requirement to wear face masks have been denied.
- ▶ *McCarthy v. Cuomo*, 2020 WL 3286530 (E.D.N.Y. 2020)
 - Plaintiff's filed for a temporary restraining order to enjoin enforcement of several of Governor Cuomo's coronavirus-related executive orders, including Executive Order 202.17 requiring face masks be worn when in public and unable to maintain social distancing. The Court determined Plaintiff's failed to demonstrate any success on the merits on any of their claims and denied the motion.
 - "[A] community has the right to protect itself against an epidemic of disease which threatens the safety of its members." Citing *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11, 27 (1905).



Challenges To Face Mask Requirements During the COVID-19 Pandemic

- ▶ *Antietam Battlefield KOA v. Hogan*, 2020 WL 2556496 (D. Maryland 2020).
 - The Court relied on *Jacobson* in denying Plaintiff's challenge to Governor Hogan's Order requiring masks be worn, prohibiting certain gatherings and requiring people stay at home.
 - To overturn the Governor's orders, those who disagree with them must show that they have "no real or substantial relation" to protecting public health, or that they are "beyond all question, a plain, palpable invasion of rights secured by the fundamental law."



Use of Police Power to Enact Emergency Public Health Measures

- ▶ Every local government has the power to adopt and amend local laws not inconsistent with the provisions of the constitution or not inconsistent with any general law relating to the protection, order, conduct, safety, health and well-being of persons or property therein. New York State Municipal Home Rule Law Section 10(1)(ii)(a) (12)
- ▶ Government entities have police power permitting them to promulgate and enforce laws that protect public health and safety.



Use of Police Power to Enact Emergency Public Health Measures

- ▶ When a government entity exercises its police power to enact an emergency public health measure, “courts will uphold it unless (1) there is no real or substantial relation to public health, or (2) the measures are . . . a ‘plain, palpable invasion of rights secured by fundamental law.’” *Cross Culture Christian Ctr. v. Newsom*, 2020 WL 2121111, at 4 (E.D. Cal. May 5, 2020) (quoting *Jacobson*).



Town Law Mirrors Executive Orders

- ▶ Both the Governor's Executive Orders and the Town's Law require Masks to be worn:
 - ▶ In Public
 - ▶ In Businesses
 - ▶ In Offices
 - ▶ On private property



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Executive Orders Concerning the Use of Face Masks and Face Coverings

- ▶ Over the past four months the Governor has issued multiple Executive Orders concerning the use of face masks and face coverings:
 - Executive Order 202.17 - April 15, 2020
 - Executive Order 202.18- April 16, 2020
 - Executive Order 202.34 - May 28, 2020
 - Executive Order 202.45 - June 15, 2020



Executive Order 202.17 - Wear in Public

- ▶ 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.



Executive Order 202.18 - Wear in Public & Private Transportation

- ▶ Any 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.



Executive Order 202.34 - Can Be Required To Wear In Businesses and Offices

- ▶ Business 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 such owner or operator shall not be subject to a claim of violation of the covenant of quiet enjoyment, or frustration of purpose, solely due to their enforcement of such directive.
- ▶ Nothing in this directive shall prohibit or limit the right of State and local enforcement authorities from imposing fines or other penalties for any violation of the directive in Executive Order 202.17.



Executive Order 202.45 - Wear Face Covering On Private Property

- ▶ The Governor has issued multiple Executive Orders limiting the gatherings of individuals, whether it is on public or private property.
- ▶ On June 15, 2020, the Governor issued Executive Order 202.45, which modified prior Executive Orders to “allow gatherings of fifty (50) or fewer individuals for any lawful purpose or reason, so long as any such gatherings occurring indoors do not exceed 50% of the maximum occupancy for a particular indoor area, and provided that the location of the gathering is in a region that has reached Phase 4 of the State’s reopening, and provided further that social distancing, *face covering*, and cleaning and disinfection protocols required by the Department of Health are adhered to.”



Why does the Town need to adopt a local mask mandate?

- ▶ The State has not established penalties for a violation of Executive Orders 202.17, 202.18, 202.34 or 202.45 (enforcement for violation of gatherings only).
- ▶ Furthermore, nothing in Executive Order 202.34 or any other Executive Order prohibits or limits the right of State and local enforcement authorities from imposing fines or other penalties for any violation of the directive in Executive Order 202.17.
- ▶ Governor Cuomo has repeatedly stated that local governments have a responsibility to enforce social distancing, mask-wearing requirements and business closures and limitations. The Governor has warned local governments across New York State that if local officials do not enforce compliance with COVID-19 public health orders, areas will be closed again.



TOWN OF NEW CASTLE

Face Mask and Face Covering Local Law Overview



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Face Mask and Face Coverings

- ▶ Section 86-1: Findings and Purpose
- ▶ Section 86-2: Masks and coverings include, but are not limited to cloth (e.g., homemade sewn, quick cut, bandana), surgical masks, N-95 respirators and face shields.



Cloth Face Mask



Filtering Facepiece Respirator



Full Length Face Shield



Surgical Face Mask



P100 Respirator



KN95 Respirator



N95 Respirator



Self Contained Breathing Apparatus



Full Face Respirator



Section 86-3

Face Masks or Face Coverings Required on Public Property

- ▶ All persons shall wear a face mask or face covering which shall be worn covering the nose and mouth of the wearer at all times in the Town of New Castle when present in or on any public property or public space, including but not limited to any park, recreational facility, town building, sidewalk, street, parking lot or plaza, when unable to maintain a distance of six feet from another person who is not a member of the same household.



Section 86-4

Face Masks or Face Coverings Required on Private Property

- ▶ All persons shall wear a face mask or face covering which shall be worn covering the nose and mouth of the wearer at all times when on private property located in the Town of New Castle, including but not limited to residential property, business and professional offices, retail and personal service establishments, restaurants, child care facilities, places of public accommodation, private clubs and religious establishments, when unable to maintain a distance of six feet from another person who is not a member of the same household.



Section 86-5

Exceptions

- ▶ Face masks or face coverings shall not be required to be worn by any child under the age of two or by anyone who is unable to medically tolerate a face covering. (§ 86-5.A)
- ▶ Face masks or face coverings shall not be required to be worn if individuals maintain a distance of at least six feet from another person. Individuals who reside in the same household shall not be required to wear a face mask or face covering if located within six feet of each other. (§ 86-5.B)
- ▶ Drivers traveling alone or exclusively with members of their households in a motor vehicle do not need to wear face coverings. (§ 86-5.C)



Section 86-5

Exceptions

- ▶ Persons playing a sport or participating in a fitness class or recreational activity are not required to wear a face mask if individuals are unable to tolerate a face covering for the physical activity. Persons must put a face mask or face covering on as soon as such physical activity has ended. (§ 86-5.D)
- ▶ Individuals are not required to wear a face mask or face covering when they are actively eating and/or drinking, or while seated at a restaurant. (§ 86-5.E)
- ▶ Police officers, fire fighters, ambulance personnel and other first responders shall not be required to wear a face mask or face covering when not practical or when engaged in a public safety matter of an emergency nature. (§ 86-5.F)



Section 86-6

Exemption Request

- ▶ If an individual or organization believes that circumstances exist that make it a hardship or impractical to meet the Town's mask mandate, such individual or organization may apply to the Chief of Police of the Town of New Castle for an exemption. The burden is on the applicant to show hardship or impracticality. (§ 86-6.A)
- ▶ If the Chief of Police, in his or her discretion, determines that wearing a face mask or face covering will result in a hardship to or is impractical for such individual or organization, the Chief of Police may grant an exemption. (§ 86-6.B)
- ▶ Any applicant aggrieved by a determination of the Chief of Police may appeal said determination to the Town Administrator, whose decision shall be deemed final. Any such appeal must be filed with the Town Clerk within ten (10) days of the issuance of the determination appealed from. (§ 86-6.C)



Section 86-7

Enforcement

- ▶ This law may only be enforced during the time that a Declaration of Emergency is issued by the Town Supervisor due to an epidemic or disease outbreak that is communicable through droplet contact or airborne transmission. (§ 86-7.A)
- ▶ The Police Department of the Town of New Castle shall enforce the Town's mask mandate. (§ 86-7.B)
- ▶ Any person found guilty of a violation of this chapter shall be subject to a fine in the amount of up to \$250 for the first violation, and up to \$500 for any subsequent violation occurring within a one-year period. (§ 86-7.C)



Questions?

Thank you.

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