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**EMERGENCY PUBLIC HEALTH ORDER OF THE
SEDGWICK COUNTY LOCAL HEALTH OFFICER**

**ORDER NO. 2021-4
AS AMENDED BY THE BOARD OF COUNTY
COMMISSIONERS ON MARCH 16, 2021**

March 15, 2021

Applicable within the entirety of Sedgwick County, Kansas

This Emergency Public Health Order is effective the 21st day of March, 2021, at 12:01 A.M. to slow the spread of COVID-19 in Sedgwick County, Kansas pursuant to the authority provided in K.S.A. 65-119, K.S.A. 65-202, and other applicable laws or regulations.

WHEREAS, the Local Health Officer is authorized and required, pursuant to K.S.A. 65-119 and K.S.A. 65-202, to immediately exercise and maintain a 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 Sedgwick 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 29,300,000 cases of the illness and more than 532,000 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 remains in effect at this time; 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")); and

WHEREAS, as of this date, in Kansas there have been 297,748 reported positive cases of COVID-19 spread among all 105 counties, including 4,824 deaths; and

WHEREAS, on March 16, 2020, the Chairman of the Board of County Commissioners of Sedgwick County issued a state of local disaster emergency declaration, 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 45,231 reported positive cases of COVID-19 in Sedgwick County and the deaths of 556 Sedgwick County residents; and

WHEREAS, the spread of COVID-19 endangers the health, safety, and welfare of persons and property within Sedgwick 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 mask or other face covering 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 Sedgwick County; and

WHEREAS, wearing a mask in public is one of the easiest and most effective ways to protect oneself and others, help keep our businesses open, our economy running, and children in school; 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 Sedgwick County residents against the community spread of COVID-19; and

WHEREAS, with regard to matters of public health, the Supreme Court of the United States has venerable precedent from 1905 which indicates that, “a community has the right to protect itself against an epidemic of disease which threatens the safety of its members...” (*Jacobson v. Massachusetts*, 197 U.S. 11); and

WHEREAS, in 1957, the Supreme Court of Kansas has stated that, “[a]mong all the objects sought to be secured by government, none is more important than the preservation of the public health; and, an imperative obligation rests upon the state through its proper instrumentalities or agencies to take all necessary steps to accomplish this objective. Statutes enacted for this purpose should be liberally construed and the most extensive power may be conferred on administrative boards, either state or local, to carry out such purpose.” (*State ex rel. Anderson v. Fadely*, 180 Kan. 652, internal citations omitted); and

WHEREAS, new variants of COVID-19 are emerging that are more contagious and virulent than the initial strain of COVID-19, and some of these new variants have been detected within Sedgwick County; and

WHEREAS, of the more than 500,000 residents within Sedgwick County, as of March 12, 2021, approximately 46,000 Sedgwick County residents have received at least one (1) dose of a COVID-19 vaccine; 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 Sedgwick County, requiring that masks or other face coverings be worn in public and requiring social distancing are measures that can be taken to slow and reduce the spread of COVID-19.

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

Section I. Definitions

As used within this Order, the following terms shall have the following meanings:

1. "Business or organization", whether the terms are used together or individually, within this Order means any person, firm, formal business type, or other entity, who solely or jointly along with others, shall be in charge, care, and/or control of the business activity, structure, or premises. As stated within this definition, "any person" includes any owner, manager, employee, or agent of the business or organization.
2. "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 secured to the head by other means or devices or 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. Ideally, a mask or other face covering should have two or more layers. A mask or other face covering may be factory-made, sewn by hand, or can be improvised from the household items such as scarfs, bandanas, t-shirts, sweatshirts, or towels. The definition of "mask or other face covering" includes a face shield. The definition of "mask or other face covering" does not include a covering that is equipped with a one-way valve or vent through which air can be exhaled.
3. "Physical barrier" means a partition (e.g., Plexiglas) or a wall that is impervious to air circulation that separates individuals from one another.
4. "Public space" means any indoor or outdoor space or area that is open to the public; this does not include private residential property or private offices or workspaces that are not open to customers or public visitors.

5. “Social distancing” means the physical separation of at least 6 feet between one individual and another individual.

Section II. Wearing of Masks or Other Face Coverings.

1. Individuals. Any person within Sedgwick County shall cover their mouth and nose with a mask or other face covering when they are in the following situations:
 - a. Present within any indoor public space;
 - b. While outdoors and in line waiting to enter an indoor public space;
 - c. While outdoors and unable to maintain social distancing at all times, except for infrequent or incidental moments of closer proximity; and
 - d. While riding on public transportation or while in a taxi, private car service, or ride-sharing vehicle.
2. Businesses and Organizations. All businesses and organizations in Sedgwick County must both: (1) make reasonable efforts to inform members of the public as to applicable mask or other face covering requirements, and (2) 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 who 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 individuals who reside together) are present and unable to maintain a 6-foot distance except for infrequent or incidental moments of closer proximity.

“Reasonable efforts to inform members of the public”, as described within Section II.2.(1) may include, but are not limited to, an individual or combined use of signs, greeters, intercoms, and directly addressing unmasked employees or customers.

An exemption to the requirement to wear a mask or other face covering must be expressed to businesses and organizations by employees, customers, members, visitors, and members of the public as an affirmative exception to the requirement. The mere existence of possible exemptions to the requirement to wear a mask or other face covering in no way releases a business or organization from its duty to ensure individuals are complying with the aforementioned requirement to wear a mask or other face covering.

3. Exemptions. The following individuals are exempt from wearing masks or other face coverings in situations described in Sections II.1 and II.2.:
- a. Each school district's governing body may opt out of Section II. of this Order, but it is highly recommended that individuals within schools wear masks or other face coverings (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 hearing impaired, or communicating with a person who is hearing impaired, 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 actively engaged in eating food or drinking a beverage;
 - 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 (note: this exemption shall not apply while an athlete is on the bench or sidelines and is not participating), and individuals who are actively participating in strenuous exercise that allows such individuals to maintain a 6-foot distance from others with only infrequent or incidental moments of closer proximity (note: this exemption does not apply while an individual is not actively participating in the strenuous exercise);
 - h. Persons who are engaged in an activity that a professional association, regulatory entity, medical association, or other public health-oriented entity recognized by the Local Health Officer has determined cannot be safely conducted while wearing a mask or other face covering;
 - i. Persons engaged in a court-related proceeding held or managed by the Kansas Judiciary;
 - j. Persons engaged in any lawful activity during which wearing a mask or other face covering is prohibited by law;
 - k. Persons who have one or more physical barriers between them and any other persons;
 - l. Voters at election polling places; and
 - m. Individuals who are actively speaking to an audience of other individuals at a religious institution, wedding, funeral, an open meeting of a political or taxing subdivision, or as a member of a political or taxing subdivision during an open meeting, provided that such individual speaking has at

least 6 feet of social distancing from other individuals or is separated from other individuals by a physical barrier. These individuals are still encouraged to wear a mask or other face covering.

Section III. Social Distancing Provisions.

1. Individuals within a public space shall maintain 6 feet of social distancing from other individuals, unless such individuals reside together or an exception stated within Section III.3. or Section III.4. applies.
2. Within a public space where a business or organization operates, such business or organization shall ensure that 6 feet of social distancing is maintained between individuals and groups of individuals, unless such individuals reside together or an exception stated within Section III.3. or Section III.4. applies.
3. Exceptions to the 6 feet of social distancing requirements stated within Sections III.1. and III.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 the customer, such as dentists, hair salons, barber shops, nail salons, chiropractors, massage services, tattoo parlors, medical services providers, and similar services.
 - b. Businesses where tasks completed by employees require such employees to work within 6 feet of one another.
 - c. Persons who have one or more physical barrier between them and any other persons.
4. The following are exempt from Sections III.1. and III.2., and are instead encouraged to maintain social distancing as much as is feasible and to maintain 6 feet of social distancing between individuals who do not reside together, when feasible:
 - a. Religious facilities;
 - b. Wedding and funeral ceremonies;
 - c. Election polling places;
 - d. Licensed childcare facilities;
 - e. Pre-K through 12th grade schools and activities within the purview of the school's governing body and/or the Kansas State High School Activities Association;
 - f. Court facilities;
 - g. Airports, bus stations, and other public transportation activities;
 - h. Military and national guard activities;
 - i. Law enforcement, jail, or correctional facilities;
 - j. Any facility being used as part of a government or community response to a natural disaster;
 - k. Food pantries and shelter facilities;

- l. Detoxification centers;
- m. Hospitals and other medical facilities;
- n. Long-term care and assisted living facilities;
- o. Government service centers;
- p. Manufacturing, processing, distribution, and production facilities;
- q. Utility facilities;
- r. People seated or gathered together at the same table or booth; and
- s. Public protest activities.

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 defined within K.S.A. 60-5502. Individuals and organizations within Sedgwick County are required to comply with this Order. Failure to comply with this Order is a violation of Board of County Commissioners of Sedgwick County Resolution No. 154-2020, codified as Sedgwick County Code Sections 14-4 and 14-5, and can result in a fine of up to \$500.00 for each violation of this Order.

Section V. Possible Review, Amendment, or Revocation. Pursuant to K.S.A. 65-201 and 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. No Effect on Prior Order. This Order does not alter or supersede Emergency Public Health Order No. 2021-3. Instead, this order becomes effective immediately after the conclusion of Emergency Public Health Order No. 2021-3.

Section VIII. Effective Date; Conclusion. This Order is effective at 12:01 A.M. on the 21st day of March, 2021, and shall remain in effect through 11:59 P.M. on the 30th day of April, 2021, unless it is amended, revoked, or replaced.

IT IS SO ORDERED this 15th day of March, 2021.

Garold Minns¹
Sedgwick County Local Health Officer, M.D.

¹ This Order was initially issued by the Local Health Officer on March 15, 2021. On March 16, 2021, the Board of County Commissioners voted to amend Section II.3.a. of the Order to read as it is stated within this document.