



City of Lowell - Law Department

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MEMORANDUM CITY OF LOWELL LAW DEPARTMENT

TO: BOARD OF HEALTH
FROM: Christine P. O'Connor, City Solicitor
CC: Eileen M. Donoghue, City Manager
RE: Opinion on Facial Coverings
DATE: April 30, 2020

Attached is a proposed Order of the City of Lowell Board of Health relative to the wearing of face coverings. Pursuant to this Order, all persons aged five and older, are required to wear a face covering at all times while in public spaces, indoors and outside. It also specifically requires that all persons, as defined above, wear face coverings when entering a business, and further that businesses post a sign similarly informing their customers of this requirement.

Boards of Health are granted broad powers during a State of Emergency. Here, the State has made such a declaration, and further, has issued several public health advisories. One such advisory is that members of the public wearing facial coverings, will have an impact on curbing transmission of COVID-19. Accordingly, the Board would be well within its authority and local jurisdiction, to order that all members of the public wear facial coverings while in public.

Pursuant to MGL c.111, Sections 30 and 31, Orders of a Board of Health enjoy a presumption of validity so long as the regulation is rationally related to a legitimate governmental purpose. Here, if such a regulation were challenged, a showing would need to be made that wearing a facial covering serves no health benefit in a communities attempts to halt the spread of COVID-19. Based on the wealth of supporting medical opinions and advisories on the subject, no such showing could be made.

Last, while a public hearing is generally required prior to the adoption of any new public health regulation, in the present case, the Board may proceed without such a hearing. Pursuant to 310 CMR 11.05: "Whenever an emergency exists in which the interest of protecting the public health...requires that ordinary procedures be dispensed with, the board of health or its authorized agent, acting in accordance with the provisions of MGL c. 111 Sec. 30, may, without notice or hearing, issue an order reciting the existence of the emergency and requiring that such action as the board of health deems necessary to meet the emergency."