On April 17, 2020, San Mateo County announced a new order (the “Face Coverings Order”), the full text of which is available at https://www.smchealth.org/sites/main/files/file-attachments/ho_order_c19-8_face_covering_20200417_copy.pdf?1587328957. The Face Coverings Order generally requires that you wear a face covering when around other people outside of your residence, including at work unless you are in an enclosed, private office. The order does not require a mask, but any kind of cloth face covering, such as a bandana, is sufficient. The details of the order are set forth below. The order is currently effective and will be enforced starting at 8:00 a.m. on April 22, 2020.

Importantly, the Face Coverings Order does NOT change the shelter in place orders (including social distancing requirements) that are already in place\(^1\) -- while face coverings are a tool for reducing the spread of the COVID-19 virus, they are not a substitute for sheltering in place, physical distancing of at least six feet, and frequent hand washing. The purpose of this memorandum is to provide legal guidance on the Face Coverings Order so that we are compliant and acting consistently throughout the University.

The Face Coverings Order is identical to an order in place in Alameda County, so it is also applicable to our facilities in those areas. To lighten the enforcement burden on local law enforcement, Santa Clara County has issued guidance\(^2\) (as opposed to an order) strongly urging individuals to wear face coverings in a manner that is consistent with the Face Coverings Order, and the County has indicated it is anticipating significant voluntary compliance with this guidance. Consequently, the University urges compliance with the Face Coverings Order in our facilities in Santa Clara County as well.

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\(^1\) See https://ogc.stanford.edu/ for the latest guidance on the applicability of shelter in place orders to the University.

What is a “Face Covering”?  

As used in the Face Coverings Order, a “Face Covering” means a covering made of cloth, fabric, or other soft or permeable material, without holes, that covers only the nose and mouth and surrounding areas of the lower face.

Examples of Face Coverings provided in the order include a scarf or bandana; a neck gaiter; a homemade covering made from a t-shirt, sweatshirt, or towel, held on with rubber bands or otherwise; or a mask, which need not be medical-grade. A Face Covering may be factory-made or may be handmade and improvised from ordinary household materials. The Face Covering should be comfortable, so that the wearer can breathe comfortably and does not have to adjust it frequently. For as long as medical grade masks such as N95 masks and surgical masks are in short supply, the order instructs members of the public not to purchase such masks as Face Coverings.

For Face Coverings that are not disposed of after each use, the order advises that people should clean them frequently. Any mask that incorporates a one-way valve (typically a raised plastic cylinder about the size of a quarter on the front or side of the mask) that is designed to facilitate easy exhaling does not qualify as a Face Covering under this order.

A video showing how to make a face covering and additional information about how to wear and clean Face Coverings may be found at the website of Centers for Disease Control and Prevention, at https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/diy-cloth-face-coverings.html.

When Must a Face Covering be Worn?

In general, even when not technically required by the Face Coverings Order it strongly encourages people to wear Face Coverings when in public. Except as specifically exempted below, the Face Coverings Order requires individuals to wear a Face Covering outside their residence when they are: (i) inside or at any location or facility engaging in work that is permitted to be performed outside of their residence; (ii) inside of (or in line to enter) any essential business; (iii) obtaining healthcare services (unless directed otherwise by such healthcare service professionals); and (iv) waiting for or riding on public transportation or are in a ride-sharing vehicle. Each operator of any public transportation or ride-sharing vehicle must wear a Face Covering while driving or operating such vehicle, regardless of whether a member of the public is in the vehicle.

Further, the order stipulates that all personnel (including employees, contractors, and volunteers, but excepting healthcare personnel which are subject to their own regulation regarding specified face coverings) must wear a Face Covering at the workplace and when performing work off-site any time such person is: (i) interacting in person with any member of the public; (ii) working in any space visited by members of the public, such as by way of example, reception areas, service counters, public restrooms, cashier and checkout areas, waiting rooms, service areas, and other spaces.
used to interact with the public, regardless of whether anyone from the public is present at the time; (iii) working in any space where food is prepared or packaged for sale or distribution to others; (iv) working in or walking through common areas such as hallways, stairways, elevators, and parking facilities; or (v) in any room or enclosed area when other people (except for members of the person’s own household or residence) are present. For clarity, the order provides that a Face Covering is not required when a person is in a personal office (a single room) when others outside of that person’s household are not present as long as the public does not regularly visit the room.

The order further requires essential businesses such as the University to: (a) take reasonable measures, such as posting signs, to remind customers and the public of the requirement that they wear a Face Covering while inside of or waiting in line to enter any facility; and (b) take all reasonable steps to prohibit any member of the public who is not wearing a Face Covering from entering and must not serve that person if those efforts are unsuccessful and seek to remove that person.

The Face Coverings Order does not require any person to wear a Face Covering while driving alone, or exclusively with other members of the same family or household. The order further provides that any child aged two years or less must not wear a Face Covering because of the risk of suffocation, and it does not require that any child aged 12 years or less wear a Face Covering. A Face Covering is also not required to be worn by an individual that can show either: (1) a medical professional has advised that wearing a Face Covering may pose a risk to such person for health-related reasons; or (2) 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. The order also provides that a Face Covering should not be used by anyone who has trouble breathing or is otherwise unable to remove the Face Covering without assistance.

The order further provides that wearing a Face Covering is recommended but not required while engaged in outdoor recreation such as walking, hiking, bicycling, or running. Each person engaged in such activity must comply with social distancing requirements to the greatest extent possible. The Face Coverings Order recommends that each person engaged in such activity bring a Face Covering and wear it in circumstances where it is difficult to maintain compliance with social distancing requirements, and that they carry the Face Covering in a readily accessible location. The order further notes that because running or bicycling causes people to more forcefully expel airborne particles, runners and cyclists must take steps to avoid exposing others to those particles, such as wearing a Face Covering when possible, crossing the street when running to avoid sidewalks with pedestrians, slowing down and moving to the side when unable to leave the sidewalk and nearing other people, never spitting, and avoiding running or cycling directly in front of or behind another runner or cyclist who is not in the same household.

Further Questions

Please reach out to the Office of the General Counsel (OGCadvice@stanford.edu) or Human Resources (vphumanresources@stanford.edu) if you have any questions about how the Face Coverings Order applies to your specific situation. Stay well!