

In the Matter of Generally Lifting	)	CHIEF JUSTICE ORDER
Protective Face Covering	)	No. 22-002
Requirement in the Oregon State	)	
Courts	)	ORDER REVISING AND GENERALLY LIFTING
	)	REQUIREMENT FOR USE OF PROTECTIVE
	)	FACE COVERINGS IN THE OREGON STATE
	)	COURTS

I HEREBY FIND THAT:

1. ORS 1.002 provides that:
  - a. The Chief Justice of the Oregon Supreme Court is the administrative head of the judicial department of government in this state; shall exercise administrative authority and supervision over the courts of this state consistent with applicable provisions of law and the Oregon Rules of Civil Procedure (ORCP); and, to facilitate exercise of that administrative authority and supervision, may make rules and issue orders as appropriate or take any other action appropriate to perform the functions of the office of Chief Justice; and
  - b. The Chief Justice may delegate the exercise of any powers specified in ORS 1.002 to the Presiding Judge of a court.
2. ORS 1.171(4) provides that a Presiding Judge may delegate the exercise of any of the administrative powers of the Presiding Judge to another judge of the court or to the trial court administrator.
3. On March 8, 2020, Governor Kate Brown signed Executive Order 20-03, which declared a state of emergency because of the threat that the COVID-19 coronavirus posed to public health and safety (hereafter, "COVID-19 state of emergency"). On December 21, 2021, Governor Brown issued Executive Order 21-36, which extended the COVID-19 state of emergency through June 30, 2022. On February 24, 2022, Governor Brown announced that, based on the rapid drop in COVID-19 hospitalizations and case numbers statewide, she will be lifting the COVID-19 state of emergency effective April 1, 2022.
4. Since March 16, 2020, I have issued many Chief Justice Orders (CJOs) relating to the COVID-19 state of emergency and the ongoing risks to the state court system posed by COVID-19, including:
  - a. CJO 20-045 (October 28, 2020), Order Regarding the Use of Protective Face Coverings in the Oregon State Courts;
  - b. CJO 21-016 (May 25, 2021), Order Providing Exception to the Required Use of Protective Face Coverings in the Oregon State Courts (supplementing CJO 20-045);
  - c. CJO 21-025 (June 28, 2021), Order Establishing Updated Directives Relating to Court Operations (superseding CJO 20-045 and CJO 21-016), which included the following provisions:
    - (1) Subparagraph 2.b., generally lifting then-applicable protective face covering requirements;

- (2) Subparagraph 2.c., regarding protective measures in proceedings; and
  - (3) Subparagraph 2.d., regarding protective measures in other circumstances;
  - d. CJO 21-028 (July 29, 2021), Order Reinstating Required Use of Protective Face Coverings in the Oregon State Courts, with Exceptions (superseding subparagraph 2.b. of CJO 21-025);
  - e. CJO 21-030 (August 13, 2021), Order Requiring Use of Protective Face Coverings in the Oregon State Courts (superseding CJO 21-028); and
  - f. CJO 21-039 (September 16, 2021), Order Imposing Vaccination Requirement, applying to judges and staff, with the opportunity to request an exception.
5. On February 7, 2022, the Oregon Health Authority (OHA) announced that the statewide requirement that protective face coverings be worn in indoor spaces in Oregon, now set out in OAR 333-019-1025, will be lifted by no later than March 31, 2022, due to health scientist expectations that, by that time, 400 or fewer Oregonians will be hospitalized with COVID-19 (which is the level of hospitalizations the state experienced before the Omicron variant of the COVID-19 virus began to spread in late 2021). OHA's announcement further stated that, after the statewide requirement is lifted:
- a. High-risk individuals – including those who are unvaccinated, immunocompromised, at high risk of COVID-19 hospitalization (including those with underlying health conditions and those 65 and older), and those who live with people at high risk – are strongly encouraged to continue wearing protective face coverings in indoor public settings; and
  - b. Employers and businesses may continue to establish their own protective face covering requirements to protect employees and customers.

On February 28, 2022, Governor Brown announced a further upcoming change, to the effect that Oregon's general requirement to wear protective face coverings indoors will be lifted after March 11, 2022, and that, after that date, executive branch state employees working in state facilities will no longer be required to wear protective face coverings, except for employees working in correctional or health care settings, and other exceptions that are temporary in nature.

6. On February 25, 2022, the Centers for Disease Control and Prevention (CDC) issued new recommendations for the wearing of protective face coverings, based on the risk of COVID-19 spread and hospitalization status in the community, identifying three categories of county risk: low, medium, and high. The CDC now recommends that:
- a. Individuals in high-risk counties wear protective face coverings indoors, regardless of personal risk level;
  - b. Individuals in medium-risk counties wear protective face coverings indoors, if they are immunocompromised or at high risk for severe illness; and
  - c. Individuals in low-risk counties wear protective face coverings based on personal preference, informed by personal level of risk.

7. The Oregon Judicial Branch has achieved an exceptionally high vaccination rate against COVID-19 – at least 94 percent of all judges and staff – which has significantly helped to protect our judges and staff against serious illness, and also has helped to protect others who enter our court facilities and to stabilize our court operations. I thank our judges and staff for taking that important step, while at the same time recognizing that case participants and other members of the public who enter our courthouses have varying rates of vaccination, with the rates in some of our communities much lower than the statewide average.


This order is based on all the foregoing, not limited to the declared COVID-19 state of emergency, and also on currently available information concerning the risks and spread of the COVID-19 virus. This order may be revised as further information becomes available or as directives from the Governor or guidance from OHA change.

I hereby ORDER as follows:

1. Definitions. As used in this order:
  - a. “Administrative Authority” means, as to any judge, the Presiding Judge; as to any staff, “Administrative Authority” has the meaning set out in Judicial Department Personnel Rule 2.01.
  - b. “Court facility” means the courthouse or any alternative physical location being used by the court or the Office of the State Court Administrator, but not any part of a building or location that is not under the court’s control.
  - c. “In person” means that a court proceeding is being conducted in the court facility, including at least one in-person participant who is neither the judge nor court staff.
  - d. “Local government” means a county or city in whose jurisdiction the court facility is located.
  - e. “Participants” means individuals who are participating in a court proceeding, other than the judge and staff, including lawyers, parties, witnesses, jurors, interpreters, and courtroom security personnel.
  - f. “Protective face covering” means a covering of the nose and mouth to protect against spreading the COVID-19 virus, as recommended by the CDC and OHA.
  - g. “Staff” means Oregon Judicial Department (OJD) employees.
2. Protective Face Coverings
  - a. Except as provided otherwise in subparagraphs 2.b, 2.c., and 2.d., protective face coverings are no longer required to be worn in any court facility.
  - b. So long as an executive branch statewide requirement is in effect that requires protective face coverings to be worn in correctional facilities, judges and staff must wear protective face coverings when working in either an adult jail or correctional facility, or in a youth detention or correctional facility, as determined by the Administrative Authority.

- c. A Presiding Judge, the Tax Court Judge, or the Chief Judge of the Court of Appeals may order that protective face coverings be worn in either the public area of a court facility or in all areas of a court facility, including by all judges and court staff, if the Presiding Judge, Tax Court Judge, or Chief Judge determines that such an order is appropriate to:
    - (1) Align with a local government mandate that requires protective face coverings to be worn indoors; or
    - (2) Protect judges, staff, case participants, and other court users against a risk of COVID-19 spread or increased hospitalizations.
  - d. As provided in subparagraphs 2.c. and 2.d. of CJO 21-025, or pursuant to any superseding CJO continuing those same provisions, the wearing of protective face coverings may be directed or required as one or more reasonable protective measures taken in proceedings or in other particular circumstances.
  - e. Any judge, staff, participant, or member of the public may wear a protective face covering while in a court facility, if desired, subject to subparagraph 2.f.
  - f. If one or more participants in an in-person proceeding wears a protective face covering as provided under subparagraph 2.b., 2.c., 2.d., or 2.e., the judge presiding over the proceeding may:
    - (1) Require a juror to temporarily remove a protective face covering when the juror is answering a question during *voir dire*;
    - (2) Require a witness to remove a protective face covering when the witness is testifying; and
    - (3) Require any participant to temporarily remove a protective face covering to ensure that a particular communication is understood.
3. This order supersedes CJO 21-030 (Order Requiring Use of Protective Face Coverings in the Oregon State Courts) (August 13, 2021).
4. This order is effective on March 12, 2022, and will remain in effect until amended, superseded, or vacated by further Chief Justice Order.

Dated this 9th day of March, 2022.

  
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Martha L. Walters  
Chief Justice