

RESOLUTION NO. 2021 - 87

**RESOLUTION OF THE PIMA COUNTY BOARD OF SUPERVISORS
ADOPTING REGULATIONS NECESSARY FOR THE PUBLIC HEALTH
AND SAFETY OF PIMA COUNTY'S INHABITANTS, REQUIRING
PERSONS TO WEAR FACE COVERINGS WHEN THEY ARE IN INDOOR
PUBLIC PLACES AND CANNOT EASILY MAINTAIN A CONTINUOUS
PHYSICAL DISTANCE OF AT LEAST 6 FEET FROM ALL OTHER
PERSONS.**

The Board of Supervisors of Pima County, Arizona finds:

1. On March 11, 2020, Arizona Governor Doug Ducey declared a State of Emergency related to the Covid-19 outbreak. On that date, there were 124,908 total confirmed cases and 4,591 total confirmed deaths from COVID-19 *worldwide*. As of December 15, 2021, according to the Governor's most recent Executive Order (*E.O. 2021-21 -- Enhanced Surveillance Advisory: Monitoring and Preventing the Spread of COVID-19*), there have been 1,323,997 diagnosed cases of COVID-19 in *Arizona*, including 23,324 deaths in Arizona so far. The governor's State of Emergency declaration remains in effect.
2. The Covid-19 pandemic is the worst public-health crisis the United States has faced in a century. It has now caused over 800,000 confirmed deaths in the United States, and experts warn we could reach a previously unthinkable 1 million American deaths before the middle of 2022 if we do not dramatically increase our layered mitigation efforts, including most importantly, universal vaccination and masking.
3. As noted in the updated Science Brief by the Centers for Disease Control and Prevention (CDC), updated December 6, 2021, entitled *Science Brief: Community Use of Masks to Control the Spread of SARS-CoV-2* and included by reference as part of this Resolution, at least eighteen studies have confirmed the benefit of universal masking in community level analyses of COVID-19 transmission, including in transmission of "variants of concern" such as Omicron. *Two of these studies and an additional analysis of data from 200 countries that included the U.S. also demonstrated reductions in mortality. Another 10-site study showed reductions in hospitalization growth rates following mask mandate implementation.*
4. On June 19, 2020, the Pima County Board of Supervisors adopted Resolution 2020-49, requiring all persons in Pima County who were not exempt under that Resolution to wear compliant face coverings while in public, both indoors and outdoors, and unable to easily and continuously physically distance from others. At that time, the caseload in Pima County was 203 cases per 100,000 residents per week. Today, Pima County's average rate of new infections for the previous month is more than 330 per 100,000 residents per week, and recently reached 400 new cases per 100,000 residents in one week.

5. On December 4, 2020, as the last winter surge was filling up our hospital beds across the county, the Pima County Board of Supervisors adopted Resolution 2020-96, requiring all persons in Pima County who were not exempt under that Resolution to wear compliant face coverings while in public and unable to easily and continuously physically distance from others, and additionally *mandating* that businesses refuse to allow a person who was not exempt and who refused to wear a face covering from entering or staying in the establishment.

6. One May 14, 2021 with the caseload having dropped for over one month to below 10 new cases per 100,000 county residents per week, and vaccinations available to all adults in the county, the Pima County Board of Supervisors adopted Resolution 2021-35, lifting the requirement for individuals to wear face coverings in public settings and replacing it with a recommendation to continue to do so.

7. Since early August 2021, Arizona – and Pima County – has again been experiencing alarming community spread of Covid-19 and decreased availability of necessary healthcare resources, including hospital and intensive care beds. Since August 14, 2021, community spread of Covid-19 in Pima County has been classified as “high” by the Centers for Disease Control and Prevention (CDC), which currently recommends that “Everyone in **Pima County, Arizona** should wear a mask in public, indoor settings.” (<https://covid.cdc.gov/covid-data-tracker>)

8. As of December 15, 2021: There are only three (3) ICU Beds available in all of Pima County, and overall ICU bed capacity countywide has been below 5% for 57 days and counting. Thirty four percent (34%) of all ICU beds are in use by COVID-19 positive patients, and there are currently zero Pediatric ICU beds available in Pima County.

9. As of December 15, 2021: A total of 389 COVID-19 positive inpatients are currently in Pima County hospitals, with the daily admissions continuing to exceed the daily discharges day after day. Additionally, Emergency Room beds are currently occupied at 77% of total capacity. The healthcare system is under enormous strain, even as we brace for the arrival of the Omicron variant in Pima County.

10. For the period from November 22, 2021 through December 13, 2021, Pima County hospitals have reported 155 total deaths due to COVID-19, or an average of 51.7 deaths per week.

11. While the percentage of Pima County residents fully vaccinated and boosted continues to increase, we continue to have areas of the state where vaccine coverage is low, putting individuals and communities at greater risk for COVID-19. Given the current hospital census, which is at or over capacity, even a moderate surge in cases and hospitalizations could materially impact Pima County’s health care delivery system.

12. Implementing a universal masking requirement not only has proven to decrease the rate of infections but also is able to slow community transmission. A series of cross-sectional surveys in the U.S. suggested that a 10% increase in self-reported mask wearing tripled the likelihood of slowing community transmission.

13. As part of the effort to mitigate the further spread of Covid-19 and protect our hospitals from becoming overwhelmed, more stringent and immediate enforcement of face-covering requirements is necessary.

14. Pima County, through both the Board of Supervisors and its Health Department, has broad authority to take action to protect the public health and safety of all Pima County's inhabitants, see A.R.S. § 11-251 (17); A.R.S. Title 36, Chapter 1, Article 4; *Marsoner v. Pima County*, 166 Ariz. 486 (1991), including authority to adopt and enforce "regulations necessary for the public health and safety of the inhabitants," A.R.S. § 36-183.02.

15. Furthermore, per the Arizona Supreme Court's decision in *Ariz. School Boards Assoc. Inc. v. State of Ariz.*, 2021 WL 4487632 (Sept. 27, 2021), striking down Section 39 of SB1819 as unconstitutional, the County is NOT prohibited from mitigating the COVID-19 pandemic with any measure that may impact private entities, "including an order, rule, ordinance or regulation that mandates using face coverings."

NOW, THEREFORE, BE IT RESOLVED,

Section 1. Face coverings required in indoor public settings. Every person must wear a face covering that completely and snugly covers the person's nose and mouth when the person is in an indoor public place and cannot easily maintain a continuous distance of at least six feet from all other persons. For purposes of this Resolution:

a. "Face covering" does not include 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.

b. "Indoor public place" means any indoor place that is open to the public or a segment of the public and includes, but is not limited to, businesses, venues or other establishments where people assemble or members of the general public may enter; schools; offices; public buildings; and public transportation, including taxicabs and ride sharing.

Section 2. Exempt persons. Section 1 of this Resolution does not apply to:

- a. Persons younger than five years old. Very young children (younger than 2 years old) must not wear a mask because of the risk of suffocation. Parents or guardians are responsible for ensuring that children between the ages of 5 and 17 wear appropriate face coverings as required under this Resolution.
- b. Persons with a medical condition, mental health condition, or disability that prevents safely wearing a mask. This includes persons with a medical condition for whom wearing a mask could obstruct breathing or who are unconscious, incapacitated, or otherwise unable to remove a mask without assistance. A person is NOT required to provide documentation demonstrating that the person cannot medically tolerate wearing a face covering.

- 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 mask 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, face, or head for which temporary removal of the face covering is necessary to perform the service.
- f. Persons who are eating or drinking at a restaurant or other establishment that offers food or beverage service, so long as the person is able to maintain a distance of 6 feet away from persons who are not members of the same household or party as the person.
- g. Persons who are swimming.
- h. For any activity not listed for exemption, an exemption may be granted on a case by-case basis from the Pima County Chief Medical Officer or the Director of the Pima County Health Department. General descriptions of exemptions granted will be posted on a website accessible via www.pima.gov, without identifying who requested the exemption.

Section 3. Establishments. Indoor Establishments that are open to the public must provide face coverings to their employees and require them to wear them . Additionally, establishments that are open to the public and in which continuous physical distancing of at least six feet between persons cannot be easily maintained may refuse to allow a person who is not exempt under Section 2 and who is not wearing a face covering to enter the establishment and may request that a person inside the establishment leave if the person is not exempt under Section 2 and is not wearing a face covering.

Section 4. Compliance and enforcement. The primary focus of enforcement is education and promotion of best practices to accomplish the goal of mitigating the spread of COVID-19 in our community. A person must be notified of the provisions of this Resolution and given an opportunity to comply before any further enforcement action may be taken. Further enforcement action may thereafter be taken in any manner provided by law, including as provided in A.R.S. §§ 36-183.04 through 36-183.07 or 36-191. However, no civil or criminal enforcement action may be taken without the express approval of the Pima County Board of Supervisors.

Section 5. Applicability. This Resolution applies throughout Pima County, including within incorporated areas.

Section 6. Effective date. This Resolution, as an emergency measure necessary for the immediate preservation of the peace, health or safety of Pima County, is effective upon adoption, and will remain in effect at least through February 28, 2022, pending case counts and hospitalization rates in our community and any further action by the Board.

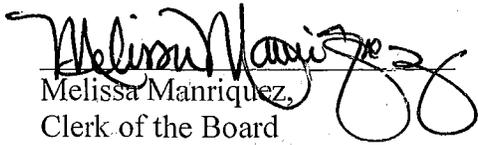
PASSED AND ADOPTED this 21st day of December, 2021.



Sharon Bronson, Chair
Pima County Board of Supervisors

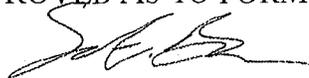
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ATTEST:



Melissa Manriquez,
Clerk of the Board

APPROVED AS TO FORM:



Sam Brown
Chief Civil Deputy County Attorney