MEMORANDUM

Date: June 24, 2020

To: The Honorable Chairman and Members
Pima County Board of Supervisors

From: C.H. Huckelberry
County Administrator

Re: **Criminal and Civil Penalties for Violating Resolution 2020-49**

Media reports indicate that the Board of Supervisors passed Resolution 2020-49 requiring face coverings in public, but without any penalties. Such is incorrect.

Restated below is Section 5 of the Resolution with the addition provided to the Board at the time of adoption:

> *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. A person must be notified of the provisions of this Resolution and given an opportunity to comply before any further enforcement action is taken against the person. 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. No civil or criminal enforcement action will be taken without the express approval of the Board. In addition, if the Pima County Health Department investigates and finds noncompliance at an establishment, it may recommend to any governing body that issues a permit or license to that establishment, including when applicable the Arizona State Liquor Board, that the permit or license be suspended.

There has been some confusion regarding whether or not the resolution applies inside other municipal jurisdictions. It does, since it was adopted under the County public health authority (A.R.S. §§ 36-183.02, 36-183.04, 36-183.05 as well as 36-191). It was not enacted under our "catch-all" ordinance authority (A.R.S. § 11-251.05) or emergency authority (A.R.S § 26-311). As with other public-health regulations, including our food code and pool code, the public health authority applies countywide without the necessity of municipal adoption; whereas the emergency authority only applies to the unincorporated areas.

The penalty statutes provide for criminal enforcement as a misdemeanor (A.R.S. § 36-191) or civil enforcement, either in court (A.R.S. § 36-183.05) or administratively through the Health Department's issuance of a notice of violation followed by a compliance order (A.R.S. § 36-183.04). If civil enforcement is taken administratively through the Health Department, the civil penalty cannot exceed $750 per person (or $5,000 per enterprise). A person or

firm issued a notice of violation may also request a hearing before a compliance order is issued.

It is **very unlikely** individuals will be cited under the Resolution's penalties. Our primary focus is not individuals who fail to wear a mask. We are focused on business and other entities that have the potential for generating many infections in a short amount of time, the so called super-spreader events (such as at bars). These types of outbreaks if left unchecked, can rapidly overwhelm the medical and hospital capacity to treat COVID-19 infected patients.

If we choose to pursue prosecution against such an entity, it will only be after it is clear there has been no attempt to meet any of the Board approved regulations regarding COVID-19. Our enforcement will require prior approval of the Board, most likely following an Executive Session with the Board to receive approval to pursue with civil or criminal prosecution as required in Section 5 of the Resolution.

The first level of enforcement will be education where the offending or reported party is advised of the need to conform to all adopted requirements to reduce the spread of COVID-19. If the business or firm is a flagrant repeat offender, we will first discuss civil enforcement with the Board before taking any action. If contact tracing confirms the activity has resulted in numerous infections including hospitalizations, we will discuss with the Board possible criminal enforcement. If the gross neglect of adopted requirements results in confirmed cases through contact tracing that has resulted in a death, criminal enforcement will be requested.

If criminal prosecution is pursued it will likely be through Health Department referring potential prosecution directly to the appropriate prosecutorial agency.

I also understand that Marana and Sahuarita have indicated this requirement does not apply in their jurisdiction. It does; however, we will not bring any enforcement action to the Board for approval within either Marana or Sahuarita without first informing officials of the particular town and allowing them the opportunity to object to enforcement. If they object to enforcement, we will so inform the Board and seek Board direction on enforcement.

CHH/anc

Attachment

c: The Honorable Kyle Bryson, Presiding Judge, Pima County Superior Court
The Honorable Barbara LaWall, Pima County Attorney
Jan Lesher, Chief Deputy County Administrator
Francisco García, MD, MPH, Deputy County Administrator & Chief Medical Officer, Health and Community Services
Dr. Terry Cullen, Public Health Director, Pima County Health Department

RESOLUTION NO. 2020-_49_

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 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 19, 2020, Pima County adopted Resolution 2020-18, declaring a state of emergency related to the Covid-19 outbreak. That state of emergency remains in effect.

2. The Covid-19 pandemic is the worst public-health crisis the United States has faced in a century. It has caused over 117,000 confirmed deaths in the United States and infected over 2.1 million people, though the actual numbers of deaths and infections are very likely higher. Many of those who survive Covid-19 will do so only after experiencing serious illness and lengthy hospitalization.

3. On May 15, Governor Doug Ducey allowed his "Stay Home, Stay Healthy, Stay Connected" order, Executive Order 2020-18, to expire, and in its place issued Executive Order 2020-36, "Stay Healthy, Return Smarter, Return Stronger," allowing businesses to reopen subject to physical-distancing and sanitation guidelines.

4. As businesses began to reopen in Arizona and other states, media outlets began reporting on and posting images of people gathering in large groups and failing to abide by physical-distancing guidelines.

5. Since the expiration of Executive Order 2020-18, and in particular in the last two-to-three weeks, Arizona has become a Covid-19 hotspot. It has seen a rapid rise in cases statewide. Before May 15, Arizona had not had a day with more than 560 reported new cases. In recent days over three times that number have been reported per day. Covid-19 hospitalizations, including hospitalizations in intensive-care units, are at record highs. The Director of the Arizona Department of Health Services has asked all hospitals to activate their emergency plans.

6. Arizona's sharp uptick in cases has alarmed public-health experts across the country.

7. SARS-CoV-2, the novel coronavirus that causes Covid-19, is believed to be spread most commonly through respiratory droplets, and a person who is not experiencing

symptoms may still be able to spread the virus to others. Studies have shown that face coverings may inhibit the virus from spreading from the wearer to others by keeping respiratory droplets containing the virus from traveling through the air to others. In other words, though face coverings may not protect the wearer, they likely protect others from the wearer, who may unknowingly be infected.

8. Accordingly, in addition to social-distancing and sanitation measures, the Centers for Disease Control (CDC) "recommends wearing cloth face coverings in public settings where other social distancing measures are difficult to maintain (e.g., grocery stores and pharmacies) especially in areas of significant community-based transmission."

9. As shown by the rapid increase in reported cases, Arizona is seeing significant community-based transmission of Covid-19. Indeed, Governor Ducey recently stated that "Covid-19 is widespread in Arizona" and issued Executive Order 2020-40, "Containing the Spread of COVID-19," which requires businesses to comply with applicable guidance, subjecting them to enforcement if they fail to do so, and provides that cities, towns, and counties are not prohibited by A.R.S. § 26-307 from adopting policies regarding wearing face coverings in public.

10. All Arizonans should be wearing face coverings when in public settings when it is not easy to stay at least six feet from others.

11. 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.

12. The adoption of regulations requiring all Pima County inhabitants, including those in cities and towns in Pima County, to wear face coverings when in public places where adequate physical-distancing cannot be easily maintained is necessary to protect the public health and safety of Pima County's inhabitants.

NOW, THEREFORE, BE IT RESOLVED,

Section 1. *Face coverings required.* Every person must wear a face covering that completely and snugly covers the person's nose and mouth when the person is in a 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. "Public place" means any place, indoor or outdoor, that is open to the public and includes, but is not limited to, businesses or other establishments where people assemble or members of the general public may enter; offices; public buildings, highways, and parks; and public transportation, including taxicabs and ride sharing.

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

a. Children under the age of 5. Parents or guardians are responsible for ensuring that children between the ages of 5 and 17 wear appropriate face coverings when required under this Resolution.

b. Persons who cannot medically tolerate wearing a face covering. 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, including on-duty law-enforcement officers, 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, 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. Any member of a group of persons who are in a public place together and live in the same household or are part of a party of 10 or less, so long as the group can easily maintain a continuous physical distance of at least 6 feet from all other persons not part of the household or party.

h. Persons who are engaged in outdoor work, recreation, or exercise, when alone or as part of a group of people who live in the same household or constitute a party of 10 or less, so long as they are able to easily maintain a continuous physical distance of at least 6 feet from all other persons not part of the same household or party.

i. Persons who are incarcerated.

j. Persons who are swimming.

k. 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 and 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.* 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. *Complaints and investigations.* Pima County will provide a public website available via www.pima.gov through which any person may file a written complaint alleging noncompliance with this Resolution at any establishment that is open to the public. The website will allow the submission of photographs, and, when possible, photographs depicting violations should be provided. The Pima County Health Department will investigate complaints and take enforcement action where appropriate. Pima County will post copies of the complaints and associated documentation, including photographs, on the website.

Section 5. *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. A person must be notified of the provisions of this Resolution and given an opportunity to comply before any further enforcement action is taken against the person. 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. No civil or criminal enforcement action will be taken without the express approval of the Board. In addition, if the Pima County Health Department investigates and finds noncompliance at an establishment, it may recommend to any governing body that issues a permit or license to that establishment, including when applicable the Arizona State Liquor Board, that the permit or license be suspended.

Section 6. *Applicability.* This Resolution applies throughout Pima County, including within incorporated areas.

Section 7. *Effective date.* This Resolution is effective upon adoption.

PASSED AND ADOPTED this 19th day of June, 2020.

Ramón Valadez JUN 19 2020

Ramón Valadez
Chairman, Pima County Board of Supervisors

ATTEST:

Julie Castañeda
Clerk of the Board

APPROVED AS TO FORM:

Andrew L. Flagg
Chief Civil Deputy County Attorney