

## **Mask or No Mask?**

In 1790, the French National Assembly called for an 'invariable standard of weights and measurements' based in the Earth's circumference to make uniform distances and measurements from around the world. Of course, you know this as the metric system. Predicated on uniformity, it created certainty in one standard, easily understood as far east as China and as far south as North Africa.

The uniformity principle is no more in Colorado. Where the Governor once gave an executive order on face masks during reopening of businesses, certain municipalities have elected to go further. Others have elected to opt out. Within some counties that have elected to go further, cities within them have elected to opt out. As to answer the question to mask or not to mask, we are left with the dreaded patchwork of solutions that is a worst-case scenario in governance.

Fortunately, we can find a few commonalities in the orders that set a baseline for what the state, counties, and cities will expect from an auto dealership regarding the usage of 'non-medical grade facial coverings.'

### **1. What do we know? Employees must wear masks.**

Our best guidance comes from our most pertinent regulatory agency – the Auto Industry Division. Within the Emergency Rule amended for Safer at Home (Phase 2), their direction was consistent with Public Health Order 20-28, and several iterations of Executive Orders (D2020-092, D2020-110). The Rule, and Best Practices, urge dealers to keep their employees masked while in the dealership. In fact, any employee that interacts with customers or other employees **MUST** be masked. It is not required for anyone who works alone in an office or does not interact with other employees – however, it is still advisable, as leaving the office unmasked can happen without the employee realizing it.

While it is true that Governor Polis passed another order, transitioning Colorado to Protect Our Neighbors (Phase 3 or D2020-127), movement to that Executive Order still refers to Public Health Order 20-28 for Retail and offers no material change for dealers.

### **2. Must Customers Wear Masks in the Store? Depends on Where you are.**

Under the state Public Health Order 20-28, and the Auto Industry Division guidance, the answer is "no – but." The State mandates only employers facing customers or other employees be masked. However, it opens the doors for local governments to go further. Notably, Denver did this early on, requiring any resident in a public building or in line to enter a public building to be masked. This past week, the Tri-County Health Department (covering Douglas, Adams, and Arapahoe counties) and Jefferson County also issued local masks orders that will also require consumers **INSIDE** showrooms to be masked as well.

Enforcement of this public health guide lined has been largely absconded by the counties and passed on to the dealers. So, while dealers have always retained the right to request consumers to leave for not wearing a mask, they are now expected to do so.

### **3. The Cities Strike Back. Douglas County, too.**

Because Tri-County is not a governing body, each of the counties it covers had to adopt the health order to make it effective. Douglas County, notably at odds with Tri-County after this year's shutdown order, elected NOT to adopt the mask order. The City of Castle Rock did as well. Thus, Douglas County reverts to Public Health Order 20-28, requiring only employees to be masked, but leaving dealers the discretion on whether to exclude consumers for being unmasked.

Douglas County was not the only dissent. Brighton – in Adams County – and Glendale – in Arapahoe but surrounded by Denver – and the town of Bennet - have also opted out of the order, rejoining the hierarchy of the state requirements.

### **4. Resources**

I suspect that this will not be the end of the merry-go-round of local orders and opt outs. We will keep you updated as these orders progress. In the meantime, here are some resources for baseline information:

- A. Executive Order 2020- 127 (Protect Our Neighbors):  
<https://www.colorado.gov/governor/sites/default/files/inline-files/D%202020%20127%20Protect%20Our%20Neighbors.pdf>
- B. Public Health Order 20-32 (Protect Our Neighbors – but incorporating Safer at Home):  
[https://drive.google.com/file/d/11F0Gd7DfVONN4p4yNa5h6\\_00xJB34SZm/view](https://drive.google.com/file/d/11F0Gd7DfVONN4p4yNa5h6_00xJB34SZm/view)
- C. Executive Order 2020 – 110 (Order Workers to Wear Non-Medical Face Coverings)  
<https://www.colorado.gov/governor/sites/default/files/inline-files/D%202020%20110%20Nonmedical%20Face%20Coverings.pdf>
- D. Public Health Order 20-31 (Face Coverings for Critical Businesses):  
<https://drive.google.com/file/d/1sB190acmezIOj51DQQ4wS7bHyXZ985zr/view>
- E. Eighth Amended Public Health Order 20-28 (Safer at Home and in the Vast, Great Outdoors):  
<https://drive.google.com/file/d/1sB190acmezIOj51DQQ4wS7bHyXZ985zr/view>
- F. D 2020 – 123 Amended Safer At Home and in the Vast, Great Outdoors:  
<https://drive.google.com/file/d/1eHgVwZqFtBVgoytQ6DKQTVI9JOIfHHn/view>