



Wisconsin Elections Commission

212 East Washington Avenue | Third Floor | P.O. Box 7984 | Madison, WI 53707-7984
(608) 266-8005 | elections@wi.gov | elections.wi.gov

DATE: April 1, 2021

TO: All Wisconsin Election Officials

FROM: Meagan Wolfe
Administrator

SUBJECT: Face Coverings While Voting and Conducting Elections

On March 31, 2021, the Wisconsin Supreme Court issued a ruling in the case challenging the Governor's emergency orders. The Court found that state law on public health emergencies "must be read to forbid the governor from proclaiming repeated states of emergency for the same enabling condition absent legislative approval." The ruling means that the Governor's state of emergency order which included requiring the use of face coverings is no longer in effect.

In light of this order, clerks have asked what it means for conducting the Spring Election on April 6. The short answer is that the only change could affect election observers. Unless there is a county or municipal public health order that requires face coverings, election observers cannot be required to wear face coverings at polling places on Election Day. All other previous guidance from the Wisconsin Elections Commission about voters and election inspectors and face coverings was based on constitutional and statutory provisions outside of the emergency order, and therefore remains unchanged. All guidance regarding polling place setup and procedures for social distancing and sanitation also remains in place. Clerks may continue to require election inspectors to wear face coverings as a condition of employment and use of face coverings should continue to be part of the training provided to inspectors on maintaining a safe polling location.

This document also updates previous face covering guidance to clerks from the Wisconsin Elections Commission, which is based on guidance from State of Wisconsin public health officials and information available from the Centers for Disease Control (CDC).

1. Q: Can municipalities require voters to wear face coverings while voting at the polls on election day?

A: No. The Wisconsin Supreme Court ruling has not affected guidance that only the Legislature can establish individual voter qualifications. The authority of the Legislature to establish voter qualifications is rooted in the Wisconsin Constitution. The WEC, along with county or local governing bodies and/or election officials, cannot pass ordinances or establish rules that add qualifications for an eligible elector to cast a ballot.

Clerks may establish procedures to allow for voters without facial coverings to safely cast a ballot on election day. This may involve using designated areas of the polling place for these voters or assigning poll workers with additional personal protective equipment (PPE) to serve these voters.

2. Q: Is it recommended that voters and election officials wear face coverings during in-person absentee and election day voting?

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Administrator
Meagan Wolfe

Yes. The Wisconsin Supreme Court ruling has not affected guidance we have developed with the assistance of public health officials from the Wisconsin Department of Health Services, which is that face coverings are recommended for use by voters and poll workers on election day and during in-person absentee voting or voter registration at the clerk's office or alternate site. Commission staff updated our reference and training materials to account for this recommendation and new signs recommending face coverings were included in the signage packet you received with your sanitation supplies in 2020.

3. Q: What about during in-person absentee voting at the clerk's office or alternate site?

A: We do not believe face coverings can be required for voters during in-person absentee voting, but it is recommended that local election officials and voters use face coverings in these situations due to likely face-to-face interactions between voters and clerk staff. The legal analysis does not change, and local jurisdictions cannot add additional voter qualifications that are not set forth in the statutes, even if voters choose to exercise their right using the absentee voting process. Public health guidance issued by the Wisconsin Department of Health Services states: "Everyone should wear a [cloth face cover](#) in public settings and when around people who don't live in your household, especially when other [social distancing](#) measures are difficult to maintain."

4. Q: Our county or municipality has a public health order or governing body mandate that requires face coverings. How does that impact the guidance for in-person voting?

A: A county or municipal public health order that requires face coverings is not a reason to deny a voter a ballot during in-person absentee or polling place voting. The legal analysis does not change, and county or local jurisdictions cannot add additional voter qualifications that are not set forth in the statutes, whether the voter chooses to exercise their right using the in-person absentee voting process or voting at a polling location.

5. Q: Can municipalities require poll workers to wear face coverings as a condition of serving?

A: Yes, Commission staff believe municipalities have the authority to determine and train their poll workers on "changes in laws, rules and procedures affecting the performance of their duties." Wis. Stat. § 7.15(1)(e). If face coverings are required, municipal clerks' training for their poll workers should instruct them that one of the new procedures being implemented for health and safety of both voters and fellow inspectors is that everyone is required to wear a face covering when they work. This change would be considered part of an overall strategy to incorporate public health procedures during the COVID-19 pandemic into previously established election procedures, like wiping down equipment, providing single use pens, using social distance markings on the floor, or modified line management to keep voters appropriately spaced out. If a municipality chooses to require a face covering for its poll workers, it should be part of the new procedures implemented and trained on by the clerk.

Clerks should discuss the importance of public health procedures developed and implemented to protect the health and safety of election officials and voters. If necessary, poll workers who refuse to follow procedures and instructions provided by the clerk or chief election inspector would be neglecting their official duties and may be removed from their positions. Wis. Stat. § 7.15(1)(f) provides municipal clerks with the authority to discharge election officials for improper conduct or willful neglect of duties. Wis. Stat. § 7.30(6)(c) provides further guidance on the removal of elections officials, specifically stating that if any election official lacks the statutory qualifications, fails to attend training sessions, neglects official duties, or commits official misconduct, the municipal clerk shall remove the official from office.

6. Q: What about poll workers appointed from a list provided by one of the political parties?

A: Yes, those poll workers are subject to any health or safety procedures adopted by the clerk or municipality for a polling location. While state law allows the two main political parties to make appointments to the election inspector list submitted in November of an odd-numbered year, and the clerk is required to use appointees from the list, those workers must still follow the same rules and procedures that are in place for inspectors who are unaffiliated.

7. Can a municipality require election observers to wear a face covering while observing at an in-person absentee ballot location or a polling location on Election Day?

A: Only if there is a local health order or directive from a municipality requiring a face covering at the locations in which voting is occurring either in-person absentee or at a polling location. Wisconsin Statute § 7.41 provides members of the public access to observe the public aspects of voting. While Wis. Stat. § 7.41 is silent as to measures that could be implemented to maintain the health and safety of those present at an in-person absentee or polling location, Commission staff believe municipalities can regulate conduct on their property and require masks as long as it does not interfere with the right to vote. Additionally, inspectors have the authority to preserve order and issue lawful commands or orders. They may also remove individuals for disruptive behavior or failure to comply with such lawful orders. Wis. Stat. § 7.37(2).

8. Q: Should voters be asked to remove their face covering to verify they ‘reasonably resemble’ the photo on their photo ID?

A: No, most voters will not have to remove their face covering to verify they reasonably resemble the photo on their ID. The requirement is that the photo on the ID must ‘reasonably resemble’ the voter, and Commission staff believe this verification can be done in most instances without face covering removal. There may be rare instances where brief removal or rearrangement of the face covering could be necessary during this process, but these instances would be the exception. Election inspectors assigned to verify the photo ID should be reminded of the “reasonably resemble” standard set forth in the statute and be mindful of this standard when conducting this comparison at the polls.

9. Q: What accommodations do we need to consider with regard to face covering usage and communication with voters who rely on lip reading to communicate?

A: In this situation, consider using a clear face covering, if possible. If a clear face covering is not available, consider whether you can use written communication to interact. It may be easier for voters who rely on reading lips to communicate more easily with a poll worker or election official if a face covering is removed or relaxed during these interactions. We recommend that these interactions take place using plexiglass barriers or shields from at least a 6-foot distance between the parties.

10. Q: What kind of face coverings are appropriate for use by voter and election officials?

A: The CDC has noted that N95 respirators are critical supplies that should be reserved for healthcare workers and other first responders. If available, these face coverings may be used by election officials and voters, but cloth face coverings and other face coverings are acceptable as well.

11. Q: How do I safely put on or take off my face covering?

A: The CDC has also provided these recommendations:

- Wash your hands before putting on your face covering
- Put it over your nose and mouth and secure it under your chin
- Try to fit it snugly against the sides of your face
- Make sure you can breathe easily
- Don't put the face covering around your neck or up on your forehead
- Don't touch the face covering, and, if you do, wash your hands or use hand sanitizer to disinfect
- Wash or sanitize your hands after removing your face covering

12. Q: Is there anyone who is not recommended to wear a face covering?

A: The CDC website states: "Cloth face coverings should not be placed on young children under age 2, anyone who has trouble breathing, or is unconscious, incapacitated or otherwise unable to remove the face covering without assistance."

13. Q: How do I know how many face coverings, or other Personal Protective Equipment (PPE), I will need for election day or in-person absentee voting?

A: The CDC has created a burn rate calculator that can be used to estimate how many face coverings or PPE you will need: <https://www.cdc.gov/coronavirus/2019-ncov/hcp/ppe-strategy/burn-calculator.html>. The CDC notes this tool "is a spreadsheet-based model that will help healthcare facilities plan and optimize the use of PPE for response to coronavirus disease 2019 (COVID-19). Non-healthcare facilities such as correctional facilities may also find this tool useful."