

FAQ regarding Face Mask Requirements in New Mexico

What follows is not legal advice. Laws and regulations with respect to face mask requirement are subject to change. This information is provided for your reference only. *Individuals must do their own due diligence, check the latest information, and then assume personal responsibility for how they choose to proceed.*

*New Mexico Department of Health Public Health Orders can be found [here](#).
City of Santa Fe Mask Ordinance 2020-13 can be found [here](#).*

Q: Do New Mexicans have the right to an "exemption" from wearing a mask?

Yes. The state's public health order provides for medical exemptions. Businesses are required to require a written exemption from a health care provider. Some businesses do not honor exemptions and will still prevent you from entering even if you have a written exemption.

Here is the text from the State Public Health Order. Note that this information is always subject to change:

(1) Unless a healthcare provider instructs otherwise, all individuals shall wear a mask or multilayer cloth face covering in public settings except when eating or drinking. Masks with vents do not satisfy this requirement. "Retail spaces" may not allow a person who is without a mask or multilayer cloth face covering to enter the premises except where that person is in possession of a written exemption from a healthcare provider.

Q: Are the provisions for the Santa Fe City Mask Ordinance different than the state order?

Yes. Unlike the state order, the City requires that masks be worn by individuals over the age of 15. The requirements for where a mask must be worn and do not need to be worn are more specific and the exemptions are stated differently. Text from the City Ordinance 2020-13 is included below:

B. Face coverings are not required in the following circumstances:

- 1. in personal vehicles;**
- 2. when a person is alone in enclosed spaces;**
- 3. during outdoor physical activity, provided the active person maintains a minimum of six (6) feet from other people at all times;**

4. when a person is alone or only with other household members;
5. while drinking or eating;
6. When wearing a face covering causes or aggravates a health condition.

Employees for whom wearing a face covering causes or aggravates a health condition must document the condition with their employer.

Q: What kind of health care provider can provide an exemption?

This is not specified in the NM public health orders.

Q: What kind of note from a provider is needed?

For the State of New Mexico, a written note is required. For example, Jane Doe is exempt from or unable to wear a mask. The Santa Fe city ordinance does not require a note from a health care provider.

Q: Does the note need to say why the individual is exempt?

No. This would be a violation of HIPPA laws.

Q: Does the person who is exempt need to carry the note?

Yes. The State of NM requires a person to present their letter to a business upon entry when requested to do so. It might also prove to be helpful in an encounter with city police enforcing the city ordinance.

Q: Are stores and businesses obligated to let people shop or receive services with an exemption?

As of this time NM law does not ensure equal access to services if a person chooses not to or cannot wear a mask. It is not clear whether businesses must provide some reasonable accommodation. As of 2.11.2021, this seems to vary greatly from business to business. For example, some stores require that a person wear a face shield if they are not able to wear a mask. Some businesses will even offer a make-shift face shield for a shopper to use. Some businesses require that mask-less patrons use a curbside pickup service.

Q: Does it help if a person carries part of the Public Health Orders with them to show the regulations? Some businesses seem not to know the details of the current regulations in this regard.

Some people do use this strategy, carrying the NM public health orders and/or the Santa Fe city ordinance which specify there is a medical exemption. You can find all state public health here: <https://cv.nmhealth.org/public-health-orders-and-executive-orders/> Santa Fe city ordinance 2020-13 can be found here: https://www.santafenm.gov/2020_ordinances

Q: What are the possible fines or legal punishment for not wearing a mask in public places?

A violation of a state public health order carries a possible fine of \$5000. However it does not appear that the order is being widely enforced at this time.

The Santa Fe City ordinance states that violators will be guilty of an infraction and the first offense will incur a warning. Additional offenses carry a fine not to exceed \$50.

Q: If a person is approached by law enforcement for not wearing a mask, what is their legal recourse, and to this end, what documentation should they have with them?

A written medical exemption from a healthcare provider may be your best bet. Also, be aware that city police cannot enforce the state's order, only the state police can do that, while the city police can enforce a city ordinance. You also may be able to challenge a fine in court, but without an exemption the court may uphold the fine.

Q: Is there notice of liability a person can serve to businesses that try to enforce mask wearing?

There is a Cease and Desist Mask Policy Letter written for Santa Fe and available for customization at <https://unmasked.icu/9-unmasked-action/cease-and-desist-mask-policy-letter/>

You are responsible for adapting or using this document: its availability here does not imply legal advice.

Q: Where can I get more information about the public health emergency laws in New Mexico?

The statutes of the Public Health Emergency Response Act for NM are here: https://law.justia.com/codes/new-mexico/2006/nmrc/jd_ch12art10a-712b.html