

Self-Storage Masking and Other Health Protocols in Texas After Change in Governor's Orders

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Governor Abbott has issued Executive Order GA-34, **effective March 10, 2021**, which lifts occupancy limits on businesses and **lifts/supersedes all local government mask mandates**, except in counties with high hospitalizations. Masks are still “strongly encouraged” by the Center for Disease Control and in the governor’s recent order. This article will outline various FAQs and recommendations related to the changing governmental requirements. This is not meant as a substitute for individual legal advice but rather is only a summary for TSSA members; all facilities should consult with an attorney if there are additional questions not addressed here.

Mask Rules

Can we still require tenants and any guests to wear masks at our facility?

In most cases, yes. The recent executive order prevents local governments from mandating masks, but it does not prevent any private business from setting and enforcing its own rules about masks. The rules of an individual business can be more restrictive than government orders, and nothing in the order precludes a business from enacting its own hygiene/safety measures, including mask requirements (GA-34, Section 4).

If you are using a TSSA lease, your lease expressly requires all tenants to comply with posted signage that is plainly visible (Paragraph 36, section (f)(1)). It is not necessary to mail or email out a rule change; you may simply post a sign (or keep the ones you already have posted) at all entrances, which says in effect that masks are required at all times on the premises. There is no particular form of the sign that is required; it simply must be “plainly visible” to tenants.

Should we require tenants to wear masks at our facility?

Whether to require masks at your facility is an individual decision for each facility owner to make. In making this decision it is important to keep in mind that it would be unusual under standard insurance policies for any COVID-related claims to be covered. So, if someone were to argue that they contracted COVID at your facility, the likelihood is that you would be defending against that claim out of pocket anyway (but it is advisable to check with your own agent to confirm coverage or lack thereof and make your final decisions accordingly).

Your posted signage could, for example, say:

**Masks required at all times on premises.
6 feet distance between parties required at all times on premises.**

Local Emergency Orders

Are mask mandates, capacity limits, and hygiene requirements from local governments still in effect?

Local mask mandates and capacity limits have been superseded by the Governor's executive order, effective March 10, 2021. However, other local requirements remain in effect. For example, any local orders limiting in-person congregations to groups of 10 or fewer people are not superseded by the Governor's order. Other local orders that would not be superseded include any local requirements to post signage at entrances (other than mask and congregation limit signage) and to regularly disinfect high-touch surfaces.

Austin and Travis County have been outliers throughout the pandemic and their orders as of the date of publication of this article are illustrative of local orders which are not superseded by Governor Abbott's recent order. (Travis County emergency orders have expired but City of Austin orders are still in place.)

Austin's mask mandates and capacity limits have been superseded by the Governor's executive order. However, other portions of the Austin Health Authority orders (now extended through April 15, 2021) were not superseded by the Governor and are still in effect. These Austin orders still require all facilities to:

- * clean and disinfect high-touch surfaces twice a day;
- * post signage at entrances to certain common areas;
- * require at least 6 feet between groups of individuals;
- * provide a health check to workers; and
- * ensure that no more than 10 people ever gather on a site.

Some of the former Austin requirements—such as checking workers' face coverings and posting a sign that says that visitors are required to wear masks—are no longer enforceable as a matter of law or mandate; other requirements, such as those outlined above, were not superseded by the Governor's order and are still enforceable.