

## Polanco, Joanna

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**From:** Dimitrijevic, Marina  
**Sent:** Wednesday, July 01, 2020 1:31 AM  
**To:** Rabatin, Rebecca  
**Cc:** Polanco, Joanna  
**Subject:** Re: MKE Cares Ordinance

Thanks, Rebecca. Marina welcomes your testimony at the hearing. Public comments are also being accepted. I am looping in Joanna who can advise you how to participate.

I believe most cities are dealing with the issues you describe by requiring formal medical exceptions. It would be useful to hear your recommendations as exemptions, enforcement, and penalties are being considered.

Terri Williams  
Legislative Assistant  
Milwaukee Common Council  
Alderswoman Marina Dimitrijevic | 14th District  
200 East Wells Street  
Milwaukee, WI 53202  
414.286.2873 | fax 414.286.3456  
Terri.Williams@milwaukee.gov

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**From:** Rabatin, Rebecca <rrabat@milwaukee.gov>  
**Sent:** Tuesday, June 30, 2020 3:15:08 PM  
**To:** Dimitrijevic, Marina <Marina@milwaukee.gov>  
**Subject:** MKE Cares Ordinance

Alderswoman Dimitrijevic,

I just left a voicemail message regarding the MKE Cares Ordinance and that I would forward you the email I sent this morning to the Mayor's Office, MHD Commissioner Kowalik and DCD Commercial Corridor Division. I had received an email back from Nataneal Martinez that he had promptly sent my email out to all BIDs and NIDs. I had a few calls from businesses about individuals presenting cards that state they don't need to comply with the mask requirement due to their disability and the business needs to accommodate them. I would like to testify at the hearing if possible to address how the ADA is being inappropriately applied or abused.

Below is the email I sent out.

I've received phone calls from businesses asking what is an appropriate response when an individual states they cannot wear a face mask due to their disability. Some individuals are abusing the civil rights afforded under the American with Disabilities Act (ADA) in the time of the COVID-19 pandemic stating they cannot wear a face mask due to their disability. There are cards and flyers being distributed with improper information regarding the ADA exempting use of face masks as an accommodation for person with disabilities (PWDs). This is akin to abuse of accessible parking and

service animals by temporarily able bodied individuals (a disabled community term defining individuals without disabilities). Unfortunately this abuse has been large enough on the national scale that the United States Department of Justice (US DOJ) has posted an alert on their webpage but the US DOJ does not provide any guidance. Here is the US DOJ's webpage posting.

**\*COVID-19 ALERT: Fraudulent Facemask Flyers\***

The Department of Justice has been made aware of postings or flyers on the internet regarding the Americans with Disabilities Act (ADA) and the use of face masks due to the COVID-19 pandemic, many of which include the Department of Justice's seal.

These postings were not issued by the Department and are not endorsed by the Department.

The Department urges the public not to rely on the information contained in these postings and to visit ADA.gov for ADA information issued by the Department.

For more information and technical assistance about the ADA, please contact the ADA Information Line at 800-514-0301 (voice) and 800-514-0383 (TTY).

Under the ADA a public entity (state or local government) or public accommodation (shops, bars, restaurants, theaters, etc.) cannot ask an individual what is their disability. The flyers and cards clearly expound only on this ADA Regulation. But ADA Regulations, 28 CFR § 35.139 for Public Entities and 28 CFR § 36.208 for Public Accommodations, addresses not requiring a public entity or public accommodation to permit an individual to participate in or benefit from the services, programs, or activities, of that public entity or public accommodation, when that individual poses a direct threat to the health and safety of others. However, it should be noted the ADA Regulations additionally note determination whether an individual poses a direct threat to the health or safety of others must be based on reasonable judgement that relies on current medical knowledge or on the best available objective evidence, to ascertain: the nature, duration, and severity of the risk... That reasonable judgement of current medical knowledge comes from the Center of Disease Control (CDC) and Milwaukee Health Department Commissioner Jeannette Kowalik.

Under the ADA it would be appropriate for a business, to require ALL customers to wear face masks in being fair and equitable. Just asking one or another customer to put on a face mask if they cough could possibly be concluded by that customer as them being regarded as having a disability. Being regarded as having a disability is the third (and final) prong of the definition of a disability under the ADA and, the one prong of the definition of a disability in which many of lawsuits have been filed as discrimination under the ADA. The ADA requires EQUAL access or application of policies and procedures, requiring ALL customers to wear masks does this.

What is the appropriate response when an individual states they have a disability and cannot wear a face mask? If the business applies policies and procedures to ALL, requiring all customers to wear face masks, then an accommodation of providing curbside service, phoning in of orders, ordering online, and delivery are all appropriate and reasonable accommodations. As we know, these options are currently being offered by many businesses. And of course, all businesses should confer with their attorneys as to appropriate responses.

I would appreciate if the Mayor's Office, the Health Department and Department of City Development (DCD) Commercial Corridor Division would alert City of Milwaukee businesses of this fraudulent misinformation and possibly suggest business owners confer with their attorneys on appropriate responses. Could this possibly be addressed at the next COVID-19 press briefing? Could DCD Commercial Corridor send out an e-notify to all BIDS and NIDS? Our business community has

already experienced some tough couple of months and I would hate to see a business being put at risk due to misinformation of the ADA Regulations.

I appreciate your consideration and understanding on this matter.

**Rebecca J. Rabatin | Certified ADA Coordinator | Department of Administration Budget and Management Division**

200 East Wells Street, Room 603 | Milwaukee, WI 53202 | DMKE irect Line: (414)286-3475 | email [rebecca.rabatin@milwaukee.gov](mailto:rebecca.rabatin@milwaukee.gov)

**Diversity is being invited to the party, Inclusion is being asked to dance.**



## Polanco, Joanna

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**From:** Rabatin, Rebecca  
**Sent:** Wednesday, July 01, 2020 6:13 AM  
**To:** Polanco, Joanna  
**Subject:** MKE Cares Ordinance

Good morning Joanna,

Yesterday morning I sent an email to the Mayor's Office, MHD Commissioner Kowalik's Office and Nataneal Martinez of DCD Commercial Corridor Division as to my receiving phone calls from businesses on individuals' citing they are exemption, under the ADA, from wearing a face mask due to their disability. I forwarded my email to Alderwoman Dimitrijevic after receiving her e-notify of the proposed MKE Cares Ordinance and stated I would like to testify. Terri Williams asked that I touch base with you on how I am to testify.

My testimony would focus on the ADA and how it applies in relation to exceptions due to a disability under Titles II (public entities) and III (public accommodations) but also speak to the difference in approach under Title I (employment). Unfortunately misinformation or incomplete information on the ADA Regulations and its enforcement by the United States Department of Justice (US DOJ) is being cited on a national scale. The scale of this misinformation or incomplete information had prompted US DOJ to post a Fraudulent Information alert on their website.

Thank you,

**Rebecca J. Rabatin | Certified ADA Coordinator | Department of Administration Budget and Management Division**

200 East Wells Street, Room 603 | Milwaukee, WI 53202 | Direct Line: (414)286-3475 | email [rebecca.rabatin@milwaukee.gov](mailto:rebecca.rabatin@milwaukee.gov)

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## Polanco, Joanna

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**From:** Williams, Terri  
**Sent:** Wednesday, July 01, 2020 10:21 AM  
**To:** Rabatin, Rebecca  
**Cc:** Polanco, Joanna; Dimitrijevic, Marina  
**Subject:** Re: Proposed MKE Cares Ordinance

Looping in Marina here.

Terri Williams  
Legislative Assistant  
Milwaukee Common Council  
Alderswoman Marina Dimitrijevic | 14th District  
200 East Wells Street  
Milwaukee, WI 53202  
414.286.2873 | fax 414.286.3456  
[Terri.Williams@milwaukee.gov](mailto:Terri.Williams@milwaukee.gov)

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**From:** Rabatin, Rebecca <[rrabat@milwaukee.gov](mailto:rrabat@milwaukee.gov)>  
**Sent:** Wednesday, July 1, 2020 9:59:35 AM  
**To:** Williams, Terri <[Terri.Williams@milwaukee.gov](mailto:Terri.Williams@milwaukee.gov)>  
**Cc:** Polanco, Joanna <[jpolan@milwaukee.gov](mailto:jpolan@milwaukee.gov)>  
**Subject:** Proposed MKE Cares Ordinance

Terri or Joanna,

I wanted to send this screenshot that was included on one of many legal ADA articles I have addressing exemption of wearing face masks. I think it would be a good idea to include this in any PP presentation if needed.



Rebecca J. Rabatin | Certified ADA Coordinator | Department of Administration Budget and Management Division

200 East Wells Street, Room 603 | Milwaukee, WI 53202 | Direct Line: (414)286-3475 | email [rebecca.rabatin@milwaukee.gov](mailto:rebecca.rabatin@milwaukee.gov)

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