



# NEW HANOVER COUNTY

## HEALTH & HUMAN SERVICES BOARD

1650 Greenfield Street, Wilmington, NC 28401

**Dr. LeShonda Wallace**, Chair; **Dr. Kim Thrasher Horne**, Vice Chair

### Section I. Authority

This rule is authorized by Chapter 130A-39 of the North Carolina General Statutes.

### Section II. Findings

This Local Public Health Rule is adopted by the New Hanover County consolidated Health and Human Services Board, pursuant to North Carolina General Statutes, Chapter 130A – Public Health. The New Hanover Health and Human Services Board finds that this Rule is necessary for the immediate protection of the public's health and safety, based upon the following:

- A. SARS-CoV-2 virus and the resulting COVID-19 disease which has spread across the globe infecting millions of people with a significantly high rate of death, particularly among those who are elderly or medically vulnerable.
- B. On January 30, 2020, the World Health Organization (WHO) determined the outbreak constitutes a Public Health Emergency of International Concern (PHEIC).
- C. On January 31, 2020, Health and Human Services Secretary, Alex M. Azar, II, declared COVID-19 to be a public health emergency in the United States.
- D. On March 10, 2020, to address and mitigate the threat of COVID19 to vulnerable populations and to slow the spread of COVID-19 in North Carolina, Governor Roy Cooper declared a state of emergency in North Carolina.
- E. On March 13, 2020, President Donald J. Trump declared the COVID-19 pandemic to be a national emergency.
- F. On March 14, 2020, to address and mitigate the threat of COVID-19 to vulnerable populations and to slow the spread of COVID-19, Governor Roy Cooper issued Executive Order 117. Among the measures he directed were limiting mass gatherings to no more than 100 persons, temporarily closing public schools, and urging compliance with Center for Disease Control ("CDC") recommendations on social distancing.
- G. From March 17, 2020 to present, North Carolina Governor Roy Cooper issued several Executive Orders (EO) to mitigate the threat of COVID-19 to the North Carolina population and to slow the spread of COVID-19 in North Carolina. The last of NC Governor Roy Cooper's

Executive Orders requiring the wearing of face coverings expired on July 30, 2021.

- H. In response to the COVID-19 pandemic, the Chair of the New Hanover County Board of County Commissioners (“Chair”) issued a local Declaration of State of Emergency (“Declaration”) on March 20, 2020.
- I. The SARS-CoV-2 virus has developed a variant, the Delta variant, which is far more contagious than the original virus and other variants, estimated to be as much as three times as contagious as the original virus, and it is believed to be currently the dominant form of the disease-causing virus currently in our State and in New Hanover County.
- J. Fully vaccinated persons can contract the SARS-CoV-2 virus and/or its variants and transmit it to others, even when no symptoms are present, as determined by the Centers for Disease Control and Prevention (CDC). Many people who contract the SARS-CoV-2 virus or one of its variants are not symptomatic and are not aware they carry the virus. People of all ages without symptoms can transmit the virus, and because data shows the disease is very easily spread, indoor public places are a high-risk environment of unwanted transmission of the virus.
- K. Over the past month, the positivity rate of infections in New Hanover County has increased significantly to 14.2% as of 8/31/21, up from less than 2% just several weeks ago, and the number of cases, to include those under the age of 18, is rising at an alarming rate. The positive rate of infections in surrounding counties is also very high, Brunswick 18.1%, Pender 18.9%, Columbus 19.8%, Bladen 17.1%, Onslow 14.7%, and the State of North Carolina is at 14.5%. This is resulting in the number of hospitalized with COVID-19 to rise dramatically from just one (1) person several week ago to 133 as of 8/31/21.
- L. As of August 31, 2021, the percentage of New Hanover County residents who are fully vaccinated is approximately 55% of the entire population, leaving approximately 45% who are not fully vaccinated. The percentage of North Carolinians who are fully vaccinated is 50%, leaving over half of the State’s population not fully vaccinated. There is no currently approved vaccine for children under the age of 12, and thousands of people travel into New Hanover County daily from high transmission counties to work, shop, recreate, and seek medical care, and we are still in peak vacation season bringing in visitors from many other states where transmission rates are also substantial or high.
- M. The CDC and the North Carolina Department of Health and Human Services (NCDHHS) have issued guidance calling for all people, to include those fully vaccinated, to wear face coverings in indoor spaces when they are around people they do not live with, to reduce the spread of COVID-19, specifically the Delta variant of SARS-CoV-2 that is believed to spread at three times the rate of the original virus.
- N. New Hanover County’s Public Health Director and leadership of Novant Health and New Hanover Regional Medical Center, the major hospital health care provider in New Hanover County, confirm that the number of infections and hospitalizations in New Hanover County have risen at an alarming rate recently and remain at levels causing significant disruption to

the availability of non-COVID-19 hospital healthcare services, and the percentage of positive cases is well above our target of 5% or lower. These realities require prompt action to slow the spread of COVID-19 within the County to preserve medical supplies and hospital capacity to treat those with COVID-19 and other serious illnesses and injuries.

- O. It is essential to slow viral transmission and community spread as much as possible to protect our entire community population and in particular our children under 12 years of age who are not yet eligible to be protected through vaccination, and to prevent our health care system from being overwhelmed.
- P. Prompt action now in cooperation with the public can reduce the transmission of COVID-19 and prevent continued high rates of transmission leading to serious illness, hospitalizations, disruptions to important business, educational, travel, and social activity, and further loss of life.
- Q. This Rule will be enforceable pursuant to NC Statute provisions. Education Compliance Officers will provide information, education, and assistance in achieving compliance at public indoor places. Law Enforcement will exercise their discretion as to enforcement of legal remedies as provided under statute. This Rule will allow for flexibility in the use of enforcement tools and enhance the County's ability to achieve the public health purposes and outcomes sought by this Rule.
- R. Administrative enforcement, including Orders of Abatement executed by the Local Health Director, will provide mechanisms to deter violations and enhance the effectiveness of this Rule to combat the further spread of COVID-19 in the community.

### **Section III. Definitions**

- 1. "Education Compliance Officer" means the New Hanover County Health Director and/or their designated county employees upon receiving training in this Rule by the Local Health Director.
- 2. "Face Covering" means a covering of the nose and mouth that is secured to the head with ties, straps, or loops over the ears and fits snugly against the side of a person's face. A Face Covering can be made of a variety of synthetic and natural fabrics, including cotton, silk, or linen. A Face Covering may be factory-made, sewn by hand, or can be improvised from household items such as scarfs, bandanas, t-shirts, sweatshirts, or towels. These Face Coverings are not intended for use by healthcare providers in the care of patients. A face shield, alone, is not a "face covering."
- 3) "Indoor Public Place" means any enclosed area to which the public is invited or in which the public is permitted.

## **Section IV. Face Covering Mandate**

**Face Coverings Required in Indoor Public Places.** The New Hanover County Health and Human Services Board enacts the following requirement of indoor public places within New Hanover County to include offices and workplaces, business establishments (including private clubs), public transportation facilities and vehicles, and any place the public is invited or allowed to assemble.

1. Individuals must wear Face Coverings when indoors in all businesses, establishments, and indoor public places.
2. All businesses, establishments, and indoor public places must require that all persons wear Face Coverings when indoors on their premises.

**Exceptions.** Face Coverings do not need to be worn by someone who:

1. Should not wear a face covering due to any medical or behavioral condition or disability (including, but not limited to, any person who has trouble breathing, or is unconscious or incapacitated, or is otherwise unable to put on or remove the face covering without assistance);
2. Children under two (2) years of age should not wear a face covering.
3. Is under five (5) years of age and a parent, guardian, or responsible person has been unable to place and maintain a face covering safely on the child's face;
4. Is actively eating or drinking;
5. Is seeking to communicate with someone who is hearing-impaired in a way that requires the mouth to be visible;
6. Is giving a speech or performance for a broadcast, or to an audience, where they maintain a distance of at least 20 feet from the audience;
7. Is working at home, in their home, or is in a personal vehicle;
8. Is temporarily removing their face covering for identification purposes to secure government or medical services;
9. Would be at risk from wearing a face covering at work, as determined by local, state, or federal regulations or their workplace safety guidelines;
10. Has found that their face covering is impeding visibility to operate equipment or a vehicle;
11. Is alone in an enclosed space, such as a room, office or vehicle;

12. Is participating in worship, religious, spiritual gatherings, funeral ceremonies, wedding ceremonies, and other activities constituting the exercise of First Amendment rights, therefore are exempt from all requirements of this Rule, notwithstanding any other provision of this Rule.

Anyone who declines to wear a face covering for these reasons should not be required to produce documentation or any other proof of a condition. Everyone is asked to tell the truth and if they are healthy and able to wear a face covering-to wear a Face Covering so that they do not put other people at risk of serious illness and death.

#### **Section V. Purpose and Intent**

The primary purpose of this Rule is to slow the recent rapid spread of the SARS-CoV-2 virus and it's Delta variant in New Hanover County. A further purpose and intent of this Rule is to provide the County, and cities and towns within the County, with compliance tools, which can be used, when necessary, in conjunction with education, outreach, and engagement, to assist in achieving compliance with this Rule. It is further intended that the County, and cities and towns within the County, will coordinate compliance efforts to achieve consistency among jurisdictions and efficient and effective compliance with this Public Health Rule.

#### **Section VI. Effective Period**

This Rule becomes effective upon adoption by the New Hanover Health and Human Services Board, and will remain in effect until modification or revocation by the New Hanover County Health and Human Services Board. The Board will re-evaluate this Rule as needed driven by metrics of the COVID-19 pandemic.

#### **Section VII. Adoption of Public Health Orders**

Violations of this Rule are hereby determined to be a valid basis for abatement orders to remove or otherwise address the public health hazard cited in this Rule. The determination of necessity and appropriateness for an abatement order under this Rule lies with the Local Health Director. For facilities permitted to serve food or provide other services or accommodations and are subject to food and sanitation permits and regulation, a violation of this rule and any subsequent Order to Abate is separate and not concerning the grading, operating, and permitting of food and lodging facilities.

#### **Section VIII. Health Rule Enforcement**

- A. Authority and Discretion to Enforce: An Education Compliance Officer is authorized to educate and inform relative to violations of this Rule within the officer's jurisdiction. Authority and Discretion for further enforcement action lies with the Local Health Director or local Law Enforcement.

- B. Immediate Hazard to Health and Safety: Any violation of this rule represents an immediate hazard to public health and safety under N. C. Gen Stat. 130A-1 *et seq.* and is subject to remedies up to the immediate imposition of sanctions pursuant to N. C. General Statute Chapter 130A.
- C. Sanctions: Pursuant to NC General Statute 130A – applicable and appropriate remedies may be pursued, up to and including abatement orders, injunctive relief, or misdemeanor charges. Where the Local Health Director, in their determination, finds that an order of abatement is necessary to abate a public health hazard under this Rule the Local Health Director can issue an order to do so, which may include temporarily closing a facility's operations. Orders of abatement can be issued at any time upon a violation and may be issued independently of any other sanctions. An order of closure is lifted when the public health hazard has been completely and satisfactorily corrected.
- D. Enforcement Progression: The primary goal of an Education Compliance Officer is to achieve compliance. Except where a sanction may be warranted to protect the public health from imminent hazard, a compliance officer shall provide education and information relative to the need for face coverings in public indoor places. If a violation continues or resumes, the education compliance officer may refer the case to the Health Director, law enforcement or a magistrate for further action(s). It is the adopted policy of the Health and Human Services Board that sanctions, either criminal penalties or orders of abatement, or both, shall be imposed on any violator's third, and subsequent, violations.
- E. Obstruction: Every person who willfully resists, delays, or obstructs any education compliance officer in the discharge or attempt to discharge any duty of their office or employment in connection with this Rule shall be guilty of a class 2 misdemeanor.
- F. False statements: Every person who willfully states anything which that person knows to be false in any oral or written statement to an education compliance officer or hearing officer regarding the subject of an investigation or hearing occurring pursuant to this BOH Rule shall be guilty of a class 2 misdemeanor.
- G. Litigation Authority: The Office of the New Hanover County Attorney and each city or town attorneys' office is authorized to obtain appropriate relief needed to abate a violation, as well as to recover all associated costs, attorneys' fees, and any fines or penalties imposed. No further Board authority or permission to initiate litigation is required to enforce violations.
- H. Remedies Cumulative and Nonexclusive. All remedies contained in this BOH Rule are cumulative and in addition to any other remedies available under local, state, or federal law. Election to employ the remedies set forth in this BOH Rule does not preclude any other means of enforcement with respect to the same violation.

- I. City or Town Alternative Enforcement Regulations. A city or town within the County may adopt or rely upon any ordinance, resolution, or directive that confirms or supplements the enforcement provisions or mechanisms in this Rule.

**Section IX. Appeals**

Sanctions issued pursuant to this rule may be appealed pursuant to N. C. Gen. Stat. 130A-24.

Enacted this, the 31<sup>st</sup> day of August, 2021.

New Hanover County Health and Human Services Board



Dr. LeShonda Wallace, Health and Human Services Board Chair

Attested:



Donna Fayko, Health and Human Services Board Secretary