



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 of the North Carolina General Statutes.

Section II. Findings

This Local Public Health Rule is adopted by the consolidated Health and Human Services Board, pursuant to North Carolina General Statutes, Chapter 130A – Public Health, New Hanover County Public Health rules. 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, Governor Roy Cooper issued several Executive Orders (EO), to address and mitigate the threat of COVID-19 to vulnerable populations 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 COVID-19 virus has developed a variant, the Delta variant, which is far more contagious than others, estimated to be as much as three times as contagious than the original virus, and it is the dominant form of the disease-causing virus currently in our State and County.
- J. While vaccinated persons are less likely to contract COVID-19, the Delta variant has infected some vaccinated persons and can be re-transmitted to others by them as determined by the Centers for Disease Control and Prevention (CDC). Over the past month, the positivity rate of infections in New Hanover County has increased significantly to 10.1% as of Saturday 8/14/21, up from less than 3% 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 17%, Pender 16.8%, Columbus 18.8%, Bladen 18.7%, Onslow 15.1%, and the State of North Carolina is at 12.8%. This is resulting in the number of hospitalized with COVID-19 to rise dramatically from just one (1) person several week ago to 106 as of 8/16/21.
- K. As of August 13, 2021, the percentage of New Hanover County residents who are fully vaccinated is approximately 53% of the entire population, leaving approximately 47% who are not fully vaccinated. The percentage of North Carolinians who are fully vaccinated is 47%, 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.
- L. 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.
- M. New Hanover County's Public Health Director and leadership of Novant Health and New Hanover Regional Medical Center, the major health care provider within New Hanover County, confirm that the number of infections and hospitalizations in New Hanover County are at alarming levels, and the percentage of positive cases is well above our target of 5% or lower. Further, these metrics have been increasing at alarming rates. 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.

- N. Many people who contract the virus may be asymptomatic and may not be aware they carry the virus. People without symptoms can transmit the disease and because data shows the disease is very easily spread, mass gatherings can result in further transmissions of the virus.
- 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, and to prevent the health care system from being overwhelmed.
- P. Prompt action now in cooperation with the public can reduce the transmission of COVID-19 and prevent the need for greater restrictions in the future.
- Q. This Rule will be an alternative enforcement mechanism to assist law enforcement by enabling trained County and municipal staff to assist with enforcement of this Rule as Compliance Officers. It will allow for flexibility in the use of enforcement tools, and to enhance the County's ability to achieve the public health purposes supporting this Rule.
- R. Administrative enforcement, including Orders of Abatement, and penalties, will provide additional and alternative mechanisms to efficiently and more immediately deter violations and enhance the effectiveness of this Rule to combat the further spread of COVID-19 in the community.

Section III. Definitions

- 1. "Compliance Officer" means the following officers or employees or their designated assistants or deputies; only county employees, including temporary or part-time employees, or municipal employees may be designated as compliance officers, but only upon receiving training in compliance of this Rule by the Public Health Director:
 - a. Police officers, code enforcement officers, and any other employees designated by the County or municipal city/town manager, where the municipality and the County have entered into an agreement to mutually participate in the enforcement, including education, of this Rule;
 - b. The New Hanover County Public Health Director or their designees;
 - c. The New Hanover County Sheriff and designated Deputies; and
 - d. The County Attorney and associated staff.
- 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 restriction on the operation 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. 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;
3. Is actively eating or drinking;
4. Is seeking to communicate with someone who is hearing-impaired in a way that requires the mouth to be visible;
5. 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;
6. Is working at home or is in a personal vehicle;
7. Is temporarily removing their face covering for identification purposes to secure government or medical services;
8. Would be at risk from wearing a face covering at work, as determined by local, state, or federal regulations or workplace safety guidelines;
9. Has found that their face covering is impeding visibility to operate equipment or a vehicle;

10. Is alone in an enclosed space, such as a room, office or vehicle;
11. 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.

Children under two (2) years of age should not wear a face covering.

Section V. Purpose and Intent

The purpose and intent of this Rule is to provide the County, and cities and towns within the County, with administrative compliance tools, which can be used, when necessary, in conjunction with education, outreach, and engagement, to assist in achieving compliance with relevant COVID-19 related public health measures within their governmental discretion. 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 enforcement of this Public Health Rule.

Section VI. Effective Period

This BOH Rule becomes effective on the date of the special-called meeting of the Health and Human Services Board, held at least 10 days following the public notice of the rule, 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 around 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 public health nuisances/imminent health hazards. Further, for those facilities which serve food and are subject to food sanitation permits and regulation, a violation of this rule is hereby deemed to be a nuisance/imminent health hazard.

Section VIII. Health Rule Enforcement

- A. Authority and Discretion to Enforce. A compliance officer is authorized to enforce against a violation of this Rule within the compliance officer's jurisdiction. Enforcement under this BOH Rule is at the sole discretion of the compliance officer for the county, city, or town in

which the violation occurs.

- B. Public Nuisance. A violation of this Rule is a public nuisance.
- C. Immediate Danger to Health and Safety. Any violation of this rule represents an immediate danger to public health and safety under N. C. Gen Stat. 130A-1 *et seq.* and is subject to the immediate imposition of sanctions pursuant to N. C. Gen. Stat. Chapter 130A.
- D. SANCTIONS: Criminal Penalties and Abatement Orders.
 1. Where the Public Health Director, in her or his determination, finds that an order of abatement is necessary to abate a public health nuisance or hazard the Public Health Director can issue an order to do so, up to and including shutting down a facility's operations; this Rule authorizes the issuance of such orders. Orders of abatement can be issued at any time upon a violation and may be issued independently of any other sanctions.
 2. A violation is subject to a misdemeanor pursuant to General Statute 130A-25.
- E. Enforcement Progression. The primary goal of the County, the cities, towns, and any compliance officer is to achieve compliance. Except where a sanction is warranted to protect the public health from an imminent hazard, a compliance officer shall first issue a warning to abate a violation prior to seeking criminal penalty. If a violation continues or resumes, the compliance officer may refer the case to law enforcement or a magistrate for criminal enforcement. It is in the compliance officer's sole discretion to determine the most effective means of enforcement consistent with this BOH Rule, and nothing in this subsection is intended to abridge that discretion. However, 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. The compliance officer shall further have authority to issue any other notices and orders necessary to obtain compliance and cost recovery, as well as the power to inspect public and private property as provided by law, impose fines and fees, and use the administrative remedies that are available under state law, this chapter, and other applicable provisions of the New Hanover County Code or ordinances of the relevant cities or towns.

Orders of abatement may include the closure of a facility. The normal progression of enforcement using an order of abatement shall be to close a facility or establishment for 24 hours or until the public health hazard is removed, whichever occurs later, for the first violation where an order of abatement is issued; closure for 48 hours for a second violation; and 72 hours for third or more violations. However, in no instance can, or will an order of abatement be lifted if the public health hazard has not been completely and satisfactorily corrected.

- F. Public Disclosure of Uncured Violations. New Hanover County or the relevant cities or towns may publicly disclose any violation of this Rule, including the name of the Responsible Party and the nature, date, and location of the violation.

- G. Obstruction. Every person who willfully resists, delays, or obstructs any compliance officer in the discharge or attempt to discharge any duty of their office or employment in connection with this BOH Rule shall be guilty of a class 2 misdemeanor.

- H. False statements. Every person who willfully states anything which that person knows to be false in any oral or written statement to a 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.

- I. Litigation Authority. The Office of the New Hanover County Attorney and each city or town attorneys' office is authorized to file a civil action on behalf of the relevant city, town, or county to enjoin any violation and to obtain other appropriate relief needed to abate the 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.

- J. 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, including any criminal, civil, or administrative enforcement. 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.

- K. 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 X. Appeals

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

Enacted this, the ____ day of _____, 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