



**The Guilford County Board of County Commissioners in their capacity as the Guilford County Board of Health, order as follows:**

**Section I. Authority**

This rule is authorized by Chapters 130A, 153A and 166A of the North Carolina General Statutes.

**Section II. Findings**

This BOH Rule is adopted pursuant to North Carolina General Statutes, Chapter 130A – Public Health, North Carolina General Statutes Chapter 153A - Counties, North Carolina General Statutes Chapter 166A – Emergency Management, Guilford County Public Health rules, Guilford County Ordinances and the Guilford County Declaration of a State of Emergency (SOE) dated March 13, 2020, and the Governor’s Declaration of a State of Emergency (SOE) dated March 10, 2020 and related to the COVID-19 pandemic. The Board finds that this Rule is necessary for the immediate protection of the public’s health and safety, based upon the following:

- A. The novel coronavirus disease-2019 (COVID-19) is a 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, former 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, in order 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-present, Governor Roy Cooper issued several Executive Orders, to address and mitigate the threat of COVID-19 to vulnerable populations and to slow the spread of COVID-19 in North Carolina, issued several dozen Executive Orders. The last one requiring the wearing of masks was allowed to expire on July 30, 2021.
- H. In response to the COVID-19 pandemic, the Chair of the Guilford County Board of County Commissioners (“Chair”) issued a local Declaration of State of Emergency (“Declaration”) on March 13, 2020, recommending behavior designed to protect the public health.
- I. The COVID-19 virus has developed a variant, the Delta variant, which is far more contagious than others and it is the dominant form of the disease currently in our State and County.
- J. While vaccinated persons are far less likely to contract COVID-19, the Delta variant has infected vaccinated persons and can be retransmitted to others by them as determined by the Centers for Disease Control and Prevention (CDC). Over the past month, the positive rate of infections in Guilford County has increased significantly, from 1.8% to 8.2%, and the number of cases, to include those under the age of 18, is rising. The positive rate of infections in the State of North Carolina is 14%.
- K. The percentage of Guilford County residents who are fully vaccinated is approximately 50% of the entire population, leaving approximately 50% who are not vaccinated. The percentage of North Carolinians who are fully vaccinated is 47%, leaving over half of the State’s population unvaccinated. There is no currently approved vaccine for children under the age of 12, and thousands of people travel into Guilford County on a daily basis to work, shop, recreate, and seek medical care.
- L. The Centers for Disease Control and Prevention and the North Carolina Department of Health and Human Services have issued guidance calling for all people, to include those are vaccinated, to wear masks in indoor spaces when they are around people they do not live with, in order to reduce the spread of COVID-19.
- M. Guilford County’s Public Health Director and operators of Cone Health, a major health care provider within Guilford County, confirm that the rate of infections in Guilford County is at a level requiring prompt action to slow the spread of COVID-19 within the County in order 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 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 the most vulnerable and children under 12 years old, 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. Issuance of administrative penalties provides a significant deterrent to violating this Rule and will help promote public health measures and implement guidance issued by the State or County Public Health Directors.

R. This alternative enforcement mechanism is also designed to provide some relief to law enforcement, to enable additional County staff to assist with enforcing this Rule, to 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.

S. Administrative enforcement, including Orders of Abatement, civil penalties, and administrative citations, 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.

T. In some circumstances, a response to a Rule violation demands a substantial penalty to provide an effective and significant deterrent. Civil penalties must be, where necessary and appropriate, significant enough to ensure they cannot be dismissed by the commercial or non-commercial violator as "the cost of doing business," particularly when the impact to public health and safety is high.

### **Section III. Definitions**

"Enforcement 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 enforcement officers, but only upon receiving training in enforcement of this Rule by the Public Health Director:

1. 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;
2. The Guilford County Public Health Director or their designees;
3. The Guilford County Sheriff and designated Deputies; and

5. The County Attorney and associated staff.

"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. Ideally, a Face Covering has two (2) or more layers. 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."

#### **Section IV. Mask Mandate**

**Face Coverings Required in Public Places.** The Board of Health enacts the following restriction on the operation of offices, business establishments, and other public places:

- (1) Individuals must wear Face Coverings when indoors in all businesses, establishments, and public places.
- (2) All businesses, establishments, and 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;
- (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; or
- (10) Is a child whose parent, guardian, or responsible person has been unable to place the Face Covering safely on the child's face; or
- (11) Is alone in an enclosed space, such as a room, office or vehicle.

Worship, religious, spiritual gatherings, funeral ceremonies, wedding ceremonies, and other activities constituting the exercise of First Amendment rights 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 mask-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 IV. Purpose and Intent**

The purpose and intent of this Board of Health Rule is to provide the County, and cities and towns within the County, with administrative enforcement tools, which can be used when necessary in conjunction with education, outreach, and engagement, to assist on achieving compliance with relevant covid-19 related public health measures. It is further intended that the County, and cities and towns within the County, will coordinate enforcement efforts to achieve consistency among jurisdictions and efficient and effective enforcement of Public Health Orders.

#### **Section V. Effective Period**

This BOH Rule becomes effective August 13, 2021 at 5:00 p.m. and will remain in effect until the earlier of: (1) expiration or termination of the Proclamation of a Local Emergency, (2) January 8, 2022 at 5:00 p.m., or (3) modification or revocation by the Guilford County Board of Health. Further, it is also the Board's intention to reevaluate this Rule as circumstances change, including if and when the County's vaccination rate reaches 70% or its positivity rate is at or below 5% for 3 consecutive weeks.

#### **Section VI. Adoption of Public Health Orders as County Law**

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 VII. Executive Order Enforcement**

- A. Authority and Discretion to Enforce. An enforcement officer is authorized to enforce against a violation of this Rule within the enforcing officer's jurisdiction. Enforcement under this BOH Rule is at the sole discretion of the enforcing 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 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 civil penalties pursuant to N. C. Gen. Stat. 153A-77 and Chapter 130A.

D. SANCTIONS: Civil Penalties and Abatement Orders.

1. A violation is subject to a civil penalty of: (a) For violation of Section IV(1), \$50 per instance of violation that occurs after an initial warning; and (b) For violation of Section IV(2), following an initial warning, \$300 per violation for a first assessed violation, \$500 for a second violation, and \$1,500 for each additional violation by the same responsible party.
2. Imposition of Civil Penalties. Civil penalties may be imposed by an enforcing officer, a hearing officer, or the court.
3. A civil penalty for violation of this Rule may be assessed by means of a Citation issued by an Enforcement Officer. Civil penalties imposed by means of Citation shall be collected in accordance with the procedures specified in this Rule.
4. The civil penalty becomes effective and due immediately upon issuance of the Citation. The Responsible Party has ten (10) days from the date of service of the Citation to pay the penalty in the absence of a timely submitted request for hearing to appeal the citation.
5. Each and every occurrence and/or day during which the violation is repeated shall constitute a separate and distinct violation.
6. The County, City, or Town may pursue any remedy authorized by law to collect civil penalties that are not timely paid, including but not limited to a civil action for collection of civil penalties in the nature of a debt collection.
7. Guilford County may assess any violator for its investigative costs for any penalties of \$500 or more. Investigative expenses include payment for the issuing enforcement officer's time and expense in pursuing the matter to conclusion.
8. Where the Public Health Director, in her or his determination, finds that an order of abatement is necessary to abate a public health nuisance 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 civil penalties.

- E. Enforcement Progression. The primary goal of the County, the cities, towns, and any enforcement officer is to achieve compliance. Except where a sanction is warranted to protect the public health from an imminent hazard, an enforcing officer shall first issue a warning to abate a violation prior to imposing a civil penalty. If a violation continues or resumes after imposing civil penalties, the enforcing officer may refer the case to law enforcement for criminal enforcement. It is in the enforcement 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 Board of Health that sanctions, either civil penalties or orders of abatement, or both, **shall** be imposed on any violator's third, and subsequent, violations. The enforcement officer shall further have authority to issue administrative citations

and 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 Guilford 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 nuisance has not been completely and satisfactorily corrected.**

- F. Public Disclosure of Uncured Violations. Guilford 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 enforcement 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, punished by a fine not exceeding \$500, or by imprisonment in a county detention center not to exceed six months, or by both.
- H. False statements. Every person who willfully states anything which that person knows to be false in any oral or written statement to an enforcement officer or hearing officer regarding the subject of an investigation, citation, or hearing occurring pursuant to this BOH Rule shall be guilty of a class 2 misdemeanor, punished by a fine not exceeding \$250, or by imprisonment in a county detention center not to exceed three months, or by both.
- I. Litigation Authority. The Office of the Guilford 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 BOH Rule.

### **Section VIII. Citations**

- A. A Citation shall be served on the Responsible Party in one or more of the following ways:
  - 1. By in person delivery, provided the personal delivery can be accomplished without violating Public Health Orders. Such service is effective if the Citation documents are set down near the Responsible Party and orally identified in a manner that can be heard by the Responsible Party.
  - 2. By posting and mailing a copy of the Citation, if the violation occurred on real property known to the Enforcement Officer to be owned, possessed, or controlled by the Responsible Party. The Citation shall be physically posted on the real property in a position that is likely to catch the attention of a person entering the property, including, without limitation, a front door, a gate, or a mailbox. The Citation shall also be mailed to the address at which the Citation was posted, or to any other mailing address of the Responsible Party that is known to the Enforcement Officer.
  - 3. By mailing a copy of the Citation to a mailing address of the Responsible Party that is known to the Enforcement Officer, if number 1 and 2 above are impracticable.
  - 4. By emailing a copy of the Citation to an email address reasonably likely to be accessible to the Responsible Party, if number 1, 2 and 3 above are impracticable.
- B. Delivery shall be complete at the time of in person or emailing, one day after posting the Citation, or five days after service by mail alone. The failure of any person to receive the Citation shall not affect the validity of the Citation or of any other code enforcement steps or proceedings taken pursuant to this Rule.

### **Section IX. Appeals**

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