



The Guilford County Board of County Commissioners (BOCC) in their capacity as the Guilford County Board of Health (BOH), order as follows:

Section I. Authority

This rule is authorized by Chapters 130A and 153A 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, 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 BOH 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 COVID-19 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, former 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 Centers for Disease Control and Prevention (“CDC”) recommendations on social distancing.

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- 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. 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 CDC. The positive rate of infections in Guilford County has increased significantly, from a 14-day average of 1.8% in July to 9.6% as of August 26, 2021 and the number of new cases, to include those under the age of 18, is rising at an alarming rate. The positive rate of infections in the State of North Carolina recently hit 13%. Guilford County has increased from an average of 10-15 new COVID-19 cases per day in early July, 2021 to 220 - 293 new COVID-19 cases per day in the third week of August, 2021. Similarly, Guilford County increased from 8 COVID-19 hospital patients on July 1, 2021 to 169 hospital patients on August 26, 2021. As of August 26, 2021, over the last week, Guilford County has averaged 221 new confirmed COVID-19 cases per day (41.4 for every 100,000 residents).
- K. NCDHHS data (<https://covid19.ncdhhs.gov/dashboard/vaccinations>) through August 16, 2021 at 4:00 a.m. indicated that the percentage of Guilford County residents who are fully vaccinated is 50% and that 54% of Guilford County residents have received at least one dose. It further indicated that the percentage of North Carolinians who are fully vaccinated is 48%, 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 CDC and the North Carolina Department of Health and Human Services (NCDHHS) have issued guidance calling for all people, to include those who 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. Moreover, County Public Health and Emergency Services are severely strained impacting the County’s ability to effectively address the current or future pandemic needs.

- 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 diseases.
- 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. Criminal sanctions for violations of Section IV. Mask Mandate are not permitted under this Rule.
- 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.
- U. Current CDC information, which the Board finds credible, indicates: "COVID-19 spreads mainly from person to person through respiratory droplets. Respiratory droplets travel into the air when you cough, sneeze, talk, shout, or sing. These droplets can then land in the mouths or noses of people who are near you or they may breathe these droplets in. Masks are a simple barrier to help prevent your respiratory droplets from reaching others. Studies show that masks reduce the spray of droplets when worn over the nose and mouth." (See <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover-guidance.html>.)
- V. Persuasive research supports the impact of masks as a means to reduce transmission of COVID-19. See, e.g., "[An evidence review of face masks against COVID-19](https://pubmed.ncbi.nlm.nih.gov/35111111/)" (pnas.org). The Public Health Director reports that other than vaccination, masks are the next best tool to reduce COVID-19 transmission.
- W. Current NCDDHS guidance, which the Board finds credible, provides:

After months of decline, North Carolina is experiencing a rapid increase in COVID-19 cases and hospitalizations among those who are unvaccinated. The Delta variant, which is now the predominant

strain of the COVID-19 virus in North Carolina, is significantly more contagious than the original virus. While the original virus spread from one person to an average of two or three people, the Delta variant is spreading from one person to an average of six people. Therefore, unvaccinated people are at greater risk of catching and spreading COVID-19, and they pose a risk to children under 12 who cannot be vaccinated and those who are immunocompromised. [Getting vaccinated](#) is the most effective way to prevent serious illness, hospitalizations and death, and slow community spread. Rigorous clinical trials among thousands of people ages 12 and older, have proven that vaccines are safe and effective.

Following the July 27 guidance from the Centers for Disease Control and Prevention (CDC), all unvaccinated individuals should wear a face covering all indoor public settings. Fully vaccinated individuals should wear a face covering in all indoor public spaces if you live in a [county of high or substantial levels of transmission](#) as defined by the CDC, until more people are vaccinated and viral transmission decreases.

- X. Guilford County is presently rated red or “high” for community transmission of COVID-19 by the CDC. This is the highest/worst level of the CDC’s transmission categories.
- Y. Investigations of recent cases of COVID-19 transmission within Guilford County frequently revealed a common factor of indoor gatherings where persons were not masked.
- Z. The North Carolina Commission for Public Health has not regulated mask-wearing in North Carolina and this Rule does not overlap or conflict with any standard set by the Commission for Public Health. The extent of the Commission for Public Health’s regulations that pertain to COVID-19 are quite limited and include reporting of COVID-19 cases and deaths, reporting of COVID 19 test results, and transportation of dead bodies of persons with COVID-19. These regulations, while helpful, cannot be expected by themselves to have an appreciable impact on the spread of COVID-19. The necessity of enforceable containment efforts to protect public health in Guilford County, including the mask requirement imposed by this Rule, beyond the limited regulations of the Commission for Public Health is plain and demonstrated by the facts found herein.

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

4. 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:

- (1) Individuals must wear Face Coverings when indoors in all businesses, establishments, and public places.
- (2) All businesses, establishments, and public places, whether for profit or not-for-profit, must require that all persons wear Face Coverings when indoors on their premises.

Note: As used in this Rule, businesses, establishments, and public places includes schools, colleges, and universities, both public and private. Further, as to residential facilities, including but not limited to apartments and dormitories, this Rule applies to indoor portions of such facilities that are used by persons not residing within the same dwelling unit, such as common areas. Businesses and establishments are covered by the Rule whether or not they are open to members of the public.

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); this exception includes allowing sight of one's mouth where necessary in such circumstances as facilitating communication with individuals with a hearing impairment, or to assist in speech therapy and other similar circumstances.
- (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;

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(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. An enclosed space includes cubicles which reach from the floor to a height of at least 6.5 feet (in accordance with current OSHA guidance).

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.

Federal operations are not included within 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.

Children under two (2) years of age should not wear a Face Covering.

Section V. 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 VI. Effective Period

This BOH Rule becomes effective upon adoption 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. Upon becoming effective, this Rule supersedes the Board's earlier Rule on this topic.

Section VII. 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, a violation of this rule is hereby deemed to be a nuisance/imminent health hazard.

Section VIII. 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 discretion of the Enforcing Officer for the county, city, or town in which the violation occurs who shall consult with the Public Health Director where practicable.
- 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 thirty (30) 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, which may be verbal or written, to abate a violation prior to imposing a civil penalty. 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.

- 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 \$1,000, 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 subject to a civil penalty of \$300.
- 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 IX. 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 X. Appeals

Appeals concerning the enforcement of this Rule are governed by N. C. Gen. Stat. 130A-24.