

SECOND REVISED MECKLENBURG COUNTY BOARD OF HEALTH RULE

Requiring Face Coverings to be Worn in All Public Places

Section 1 – Findings

WHEREAS, 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; and

WHEREAS, on January 30, 2020, the World Health Organization (WHO) determined the outbreak constitutes a Public Health Emergency of International Concern (PHEIC); and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, on March 13, 2020, President Donald J. Trump declared the COVID-19 pandemic to be a national emergency; and

WHEREAS, 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 the Centers for Disease Control and Prevention (“CDC”) recommendations on social distancing; and

WHEREAS, 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; and

WHEREAS, in response to the COVID-19 pandemic, the Chair of the Mecklenburg County Board of County Commissioners (“Chair”) issued a local Declaration of State of Emergency (“Joint Proclamation”) on March 13, 2020, along with the six (6) towns, which provisions are incorporated herein by reference, recommending behavior designed to protect the public health; and

WHEREAS, recently, 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 the State and Mecklenburg County; and

WHEREAS, while vaccinated persons are far less likely to contract COVID-19, the Delta variant has infected vaccinated persons as well and can be retransmitted to others by them as determined by the CDC.

WHEREAS, after initial restrictive measures were implemented there was a significant decline in positivity rate, hospitalizations and deaths; however, after a relaxing of the restrictions and resulting from the COVID-19 Delta variant, which has proven to be more easily spread, the number of laboratory-confirmed positive cases and hospitalizations in the State and in Mecklenburg County have grown exponentially, and continue to climb, and

WHEREAS, since the end of June, positive rate of infections in Mecklenburg County has increased significantly, from 2% to 13%, hospitalization rates are as high as they were at the end of December 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 currently 14%; and

WHEREAS, the percentage of Mecklenburg County residents who are fully vaccinated was approximately 50% of the entire population, leaving approximately 50% who were not vaccinated. The percentage of North Carolinians who were fully vaccinated was 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 Mecklenburg County on a daily basis to work, shop, recreate, and seek medical care; and

WHEREAS, the CDC and the North Carolina Department of Health and Human Services have previously issued guidance calling for all people, including those are vaccinated, to wear face coverings while in indoor spaces when they are around people they do not live with, in order to reduce the spread of COVID-19; and

WHEREAS, Mecklenburg County's Public Health Director and operators of Atrium Health and Novant Health, major health care providers within Mecklenburg County, confirm that the rate of infections in Mecklenburg County was at a level requiring immediate and 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 as well as prevent imminent harm and other serious illnesses and injuries; and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, as a result of the forgoing, the Mecklenburg Board of Commissioners, as a Consolidated Human Services Agency (CHSA) adopted a face covering rule on September 8, 2021, that provided directives to promote public health and prevent imminent harm by supporting guidance issued by the State to combat the further spread of COVID-19 in the County; and

WHEREAS, since adopting the more restrictive Rule and with increased vaccinations, there has been a decline in the COVID-19 percent positivity rate within Mecklenburg County, and

WHEREAS, the public, private and parochial schools within Mecklenburg County have resumed in-person classes, and

WHEREAS, since the student population is largely not yet vaccinated, face coverings remain a critical tool for protecting children and keeping them safely in the classroom notwithstanding the reduced percent positivity rate, and the North Carolina Department of Health and Human Services (NC DHHS) recommends that schools continue to implement universal face covering requirements based upon county community transmission levels as defined by the CDC, and

WHEREAS, the Mecklenburg County Board of Commissioners, as a Consolidated Human Services Agency (CHSA) has been requested by the Mecklenburg County Public Health Director to amend this Rule with reduced and modified restrictions and time limits, to be effective throughout Mecklenburg County, including, but not limited to all Cities and Towns, whether incorporated or unincorporated, .

NOW, THEREFORE the Mecklenburg County Board of Commissioners, as a Consolidated Human Services Agency (CHSA), exercising the powers and duties of a local board of health, which powers it has assumed and conferred on itself by action pursuant to N.C.G.S. 153A-77, and having the authority cited herein and in the interest of public safety, hereby adopts a Second Revised Board of Health Rule Requiring Face Coverings to be Worn in All Public Places which shall apply throughout Mecklenburg County, North Carolina, including, but not limited to all Cities and Towns, whether incorporated or unincorporated as excepted and noted below.

Section 2. Authority

This Rule is enacted pursuant to N.C. Gen. Stat. 130A, 153A, and 166A of the North Carolina General Statutes

Section 3. Definitions

The following definitions are applicable to this Rule:

“Enforcement Officer” means the following officers or employees or their designated assistants or deputies:

- (1) City/Town sworn law enforcement officers;
- (2) The Mecklenburg County Public Health Director or their designees; and
- (3) The Mecklenburg County Sheriff and designated deputies.

Upon request, the Mecklenburg County Health Department shall offer training in the enforcement of this Rule to the above-designated Enforcement Officers.

"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, or gaiter face masks. 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 4. Face Covering mandate.

A. Face Coverings Required in Public Places. The Board of Health enacts the following restriction on the operation of offices, businesses, establishments, and other public places where people may travel or congregate within Mecklenburg County:

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

(See <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover-guidance.html>.)

Note: As used in this Rule, businesses, establishments, and public places includes schools (public, private or parochial), colleges, and universities, both public and private. Businesses and establishments are covered by the Rule whether or not they are open to members of the public. Examples include but are not limited to: retail, restaurants, theaters, family entertainment centers, transportation services, meetings and conferences, and local government offices as well as the indoor portions of residential facilities that are used as common areas, including but not limited to apartments, condominiums and dormitories.

B. 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;
- (10) Is a child whose parent, guardian, or responsible person has been unable to place the Face Covering safely on the child's face;
- (11) Is alone in an enclosed space, such as a room, office or vehicle; or
- (12) Is in settings where it is not practical or feasible to wear a Face Covering, including when obtaining or rendering goods or services, such as the receipt of dental services or while swimming.

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.

Section 5. Enforcement

A. Authority and Discretion to Enforce. The Mecklenburg County Public Health Director or designee, or law enforcement officer within the Enforcement Officer's jurisdiction, is authorized to enforce against a violation of this Rule. Enforcement under this Rule shall be in the sole discretion of the Enforcement Officer for the County, City, or Town in which the violation occurs.

Enforcement

B. Misdemeanors, and Abatement Orders.

(1) Any person who violates any provision of this Rule may be convicted of a misdemeanor in accordance with N.C. Gen. Stat 130A-25 and N.C. Gen. Stat 166A-19.22 *et. seq.*

(2) 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 imminent hazard, the Public Health Director can issue an order to do so, up to and including shutting down a facility's operations. Orders of abatement may be issued at any time upon a finding of a public health nuisance or imminent hazard and may be issued independently of any other penalties.

C. Public Disclosure of Uncured Violations. Mecklenburg County Public Health Director may publicly disclose any violation of this Rule, including the name of the violator and the nature, date, and location of the violation.

D. Remedies Cumulative and Nonexclusive. All remedies contained in this 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 Rule does not preclude any other means of enforcement with respect to the same violation, including but not limited to the penalties and remedies set forth in N.C. Gen. Stat. 130A-17- 20 and 23.

E. 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 6. Abrogation.

This Rule supersedes any previous County, City, or Town ordinance that is less restrictive than the Rule as established herein. This Rule is not intended to repeal any greater restriction imposed by any other State law or local government ordinance. Whether the provisions of any other law, ordinance, regulation, or restriction impose higher standards than are required by the provisions of this Rule, this Rule does not prohibit the enforcement of any such law, ordinance, regulation, or restriction.

Section 7. Severability.

Should any section of this Rule be decided by the Courts to be unconstitutional or invalid, such decision shall not affect the validity of the Rule as a whole or any part thereof other than the part so decided to be unconstitutional or invalid.

Section 8. Effective Period.

This Second Revised Rule shall become adopted and effective not less than ten (10) days after notice of publication and shall remain in effect until the first of the following to occur: (1) the percent positivity rate for COVID-19 reaches less than five percent (5%) for seven (7) consecutive days; or (2) expiration or termination of the Proclamation of a Local State of Emergency; or (3) further modification of, or revocation of this Rule by the Board of Commissioners sitting as a Consolidated Human Services Agency (CHSA).

If the percent positivity rate falls to less than five percent (5%) for seven (7) consecutive days such that the face covering provisions outlined herein are no longer in effect, Mecklenburg County residents will nonetheless be strongly encouraged to continue to use face coverings in all indoor settings, especially if unvaccinated (as per CDC recommendations), EXCEPT that schools (public, private, and parochial) will be required to follow any NC DHHS guidance on the use of face coverings.

It is the Board's intention to reevaluate this Rule as circumstances change.

Section 9. Appeals.

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

To be ADOPTED and effective not less than ten (10) days post November 3, 2021

George R. Durso
Chairman, Mecklenburg County Board of Commissioners (as CHSA)

ATTEST [Signature]
Clerk to the Board

Approved as to form:
[Signature]
County Attorney

