

CUMBERLAND COUNTY BOARD OF COMMISSIONERS  
AUGUST 24, 2021 – 10:00 AM  
117 DICK STREET, 5TH FLOOR, ROOM 564  
SPECIAL MEETING MINUTES

PRESENT: Commissioner Charles Evans, Chairman  
Commissioner Glenn Adams, Vice Chairman  
Commissioner Jeannette Council  
Commissioner Jimmy Keefe  
Commissioner Larry Lancaster  
Commissioner Toni Stewart  
Amy Cannon, County Manager  
Tracy Jackson, Assistant County Manager  
Rick Moorefield, County Attorney  
Dr. Jennifer Green, Public Health Director  
Loren Bymer, PIO Communications and Outreach Coordinator  
Dan Weatherly, Cape Fear Valley Health System COO  
Candice H. White, Clerk to the Board

ABSENT: Commissioner Michael Boose

Chairman Evans called the special meeting to order. The purpose of the special meeting was for consideration of a mask mandate. Chairman Evans led the Pledge of Allegiance.

1. APPROVAL OF AGENDA

MOTION: Commissioner Lancaster moved to approve the agenda.  
SECOND: Commissioner Council  
VOTE: UNANIMOUS (6-0)

2. ITEM OF BUSINESS

Amy Cannon, County Manager, stated Chairman Evans requested an update from Public Health Director Dr. Green and Cape Fear Valley Health System. Ms. Cannon stated COO Dan Weatherly will provide the CFVHS update.

Dr. Green provided the following COVID update and responded to questions that followed.

- Cumberland County is an area of high transmission according to the CDC data tracker
- 1,000 to 1,200 new cases coming into Public Health workflow weekly; the number has been 2,400 cases in the last week
- Case positivity rate is above 15%; number should be at or lower than 5%
- 365 have died since the beginning of the pandemic with 20 deaths in the last four weeks; the number continues to increase overtime; death is a lagging indicator
- Testing continues and testing numbers continue to increase
- 48% to 50% of population overall are fully vaccinated
- 50% of adults are fully vaccinated
- 80% age 65+ are fully vaccinated
- 18-to-24-year olds are the largest majority of cases; fewer cases seen in older adults
- Metrics are moving in the wrong direction consistent with what is happening around the state and the country

Mr. Weatherly provided the following COVID update and responded to questions that followed. COVID variant differs from first wave; affects young people more

- January 2021: 130 inpatients; 13 on ventilators; 76 deaths; 540 ED related COVID visits
- August 2021: 140 inpatients; 24 on ventilators; 60 deaths with 27 deaths in last week; ED related COVID visits are double January 2021 number; of the 60 deaths, 20 are under the age of 55
- Most ED visits are under age 55
- Currently have 5 pediatric patients
- 83% of inpatients not vaccinated

- 90% of patients on ventilators not vaccinated
- 200 patients hospital system wide with COVID
- To date, 3790 patients admitted to hospital with 388 deaths
- Hospital staff 70% vaccinated; expect to see increase with FDA approval of Pfizer vaccine
- Delta variant impacting unvaccinated hospital staff more than vaccinated staff
- 367 hospital nonvaccinated staff tested positive for COVID since January 1; 71 fully vaccinated staff test positive but had mild symptoms
- 2 hospital employees in their 30s who were mothers died in the past week

#### A. CONSIDERATION OF A MASK MANDATE

Rick Moorefield, County Attorney, provided the three handouts recorded below and presented the background memo (**Handout #1**) that described the three options or methods available to mandate face coverings.

Mr. Moorefield reviewed the draft of the amended declaration (**Handout #2**) and stated it basically sets out the basis for the initial March 2020 Declaration of a State of Emergency and the basis for amending it now. Mr. Moorefield stated because the Board must find a public health necessity, the amendment also contains a synopsis of what Dr. Green as the Public Health Director has reported and updated as of August 20, 2021.

Mr. Moorefield referenced the New Hanover County Notice to Abate Public Health Hazard (**Handout #3**) and stated it is included to show the Board what the Public Health Director could do in Cumberland County should the Board choose to request that action.

Commissioner Adams suggested adding to the amended declaration under (6) that the Pfizer vaccine has been approved. Questions and discussion followed as the Board considered the options or methods available. Mr. Moorefield stated if the Board's choice is to have the Public Health Director issue an order of abatement, Dr. Green indicated she is amenable to doing so and it can be done without asking the Board of Health. Mr. Moorefield stated should the Board decide to request the Public Health Board to adopt a rule that mandates face coverings, then he would recommend the Board also include an amended declaration or the Public Health Director's order of abatement while waiting on the Board of Health to adopt such a rule. Commissioner Adams expressed concern that the Public Health Director may become a target if she issues an order of abatement. In response to a question from Commissioner Keefe, Mr. Moorefield stated should the Board asked the Public Health Director to issue an order of abatement, then only she can rescind the order.

MOTION: Commissioner Adams moved to request the Public Health Director to issue an order of abatement.  
SECOND: Commissioner Lancaster  
VOTE: UNANIMOUS (6-0)

Commissioner Adams stated it needs to be clear the Public Health Director's order of abatement is county-wide and includes every municipality within Cumberland County.

### HANDOUT #1

#### BACKGROUND MEMO

The Board has three options to mandate face coverings as a means to protect the public health within the county's jurisdiction with the increasing numbers of COVID-19 cases. One method is to amend the current Declaration of a State of Emergency declared March 16, 2020, early in the beginning of the pandemic. That is what the City of Fayetteville has done. Durham and Buncombe County have also taken that approach. The attached (**Handout #2**) draft of an Amended Declaration details the public health necessity for making the amendment and includes the most recent data reported by the Public Health Director. The draft follows the language in the City of Fayetteville's amended declaration as to its application and implementation to maintain consistency with the City. The implementation language in Section 4 does add language that a violation of the declaration is a Class 2 misdemeanor, which is not in the City's declaration. Section 4 does include the City's language that law enforcement is encouraged to educate and

encourage voluntary compliance. The amended declaration will apply to the unincorporated area of the county and any municipality for which the mayor thereof requests the municipality to be included in the county's declaration. No municipalities have requested to be covered by the existing declaration declared at the start of the pandemic.

A second method is to request the Public Health Director to issue a public health nuisance abatement order. New Hanover County has taken this approach and a copy of the New Hanover order is attached for reference (**Handout #3**). The Public Health Director has indicated to management that she is willing to issue an order if that is how the Board wishes to proceed. An order issued by the Public Health Director is practically unenforceable because enforcement requires a civil action to be filed against a violator; however, it does apply county-wide, including within all municipalities.

The third method is to request the Public Health Board to adopt a rule that mandates face coverings. That method is intended by New Hanover County at such time as its Health Board can adopt a rule. This approach also applies county-wide, including within all municipalities. The disadvantage of this approach is that it will take at least three weeks for the Health Board to adopt such a rule if it chooses to do so because it requires a meeting at which the rule is considered, the rule must be published for at least ten days, and a second meeting with a public hearing must be conducted. A rule adopted by the Public Health Board is also enforceable as a misdemeanor criminal matter.

#### RECOMMENDATION

County Attorney recommends the Board to consider the proposed draft of the amended declaration and the New Hanover County Public Health Director's Order of Abatement to determine which method the Board may wish to undertake.

### **HANDOUT #2**

#### **FIRST AMENDMENT TO THE DECLARATION OF A STATE OF EMERGENCY TO COORDINATE RESPONSE AND PROTECTIVE ACTIONS TO PREVENT THE SPREAD OF COVID-19 WITHIN THE JURISDICTION OF CUMBERLAND COUNTY**

WHEREAS, March 16, 2020, the Cumberland County Board of Commissioners declared a State of Emergency within the jurisdiction of Cumberland County to coordinate the response and protective actions necessary to prevent the spread of COVID-19, which declaration is still in effect; and

WHEREAS, upon the Governor's issuance of Executive Order 180 on November 23, 2020, until the Governor's issuance of Executive Order 215 on May 14, 2021, there was a state- wide mandate that persons wear face coverings while inside most public and private buildings as a protective public health measure to limit the spread of COVID-19; and

WHEREAS, at the time the Governor's Executive Order 215 removed the state-wide mandate that persons wear face coverings, Cumberland County's positivity of infection rate was falling and reached a low of 5.7% at the beginning of July; and

WHEREAS, the Centers for Disease Control and Prevention ("CDC") advises that viruses constantly change through mutation and new variants of viruses are expected to occur; and

WHEREAS, the CDC reports that the Delta variant of COVID-19 is more infectious and is leading to increased transmissibility when compared to other variants, even in vaccinated individuals; and

WHEREAS, the Cumberland County Public Health Director reports as follows:

(1) over the last month, the positivity rate of infections in Cumberland County has increased significantly to 15.6% as of August 20, 2021, a rate which is almost three times the rate at the beginning of July, and the number of cases, to include those under the age of 18, is rising at an alarming rate;

(2) the positive rate of infections in surrounding counties is also very high, with Harnett at 14%, Hoke at 16.3%, Sampson at 15.6%, Bladen at 17.5%, Robeson at 15.0%, compared to the State of North Carolina at 11.9%;

(3) this increase in the spread of the Delta variant is resulting in the number of patients hospitalized with COVID-19 in Cumberland County to rise dramatically from just one person several weeks ago to 106 as of August 20, 2021;

(4) 365 Cumberland County residents have died since the beginning of the pandemic;

(5) as of August 20, 2021, approximately 49% of Cumberland County residents were fully vaccinated and approximately 48% of all North Carolinians were fully vaccinated;

(6) there is no currently approved vaccine for children under the age of 12; and

(7) current incidence rates in Cumberland County demonstrate an incidence rate of 329 per 100,000 per week with about 1,000 new cases entering the public health workflow each week, an increase from about 500 cases weekly one month ago.

WHEREAS, 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 to reduce the spread of COVID-19; and

WHEREAS, any action now in cooperation with the public can reduce the transmission of COVID-19 and prevent the need for greater restrictions in the future.

NOW, THEREFORE, pursuant to the Cumberland County Emergency Management Ordinance, set out as Chapter 5 of the Cumberland County Code, and the North Carolina Emergency Management Act, set out as Article 1A of Chapter 166A of the General Statutes, the Board of Commissioners hereby proclaim and declare the following:

#### Section 1. Ratification.

The Declaration of a State of Emergency issued on March 16, 2020, is hereby reaffirmed, and will continue as amended herein until rescinded within the jurisdiction of Cumberland County, North Carolina, and those municipalities within Cumberland County for which a request is made by the mayor thereof and attached to the Declaration or this Amendment.

#### Section 2. Wearing of Face Coverings.

(a) All persons who are present within the jurisdiction of Cumberland County or any municipality within Cumberland County for which a request is made by the mayor thereof and attached to this Amendment are required to wear a clean face covering any time they are, or will be, in contact with other people who are not household members in public or private indoor spaces. These spaces include grocery stores, pharmacies, business locations, restaurants, bars, gyms, fitness centers and public transit. While wearing the face covering, it is essential to still maintain social distance insofar as possible since social distancing is the best defense against the spread of the COVID-19. The wearing of face coverings when outdoors is strongly encouraged when social distancing is not possible.

(b) A face covering is a material that covers the nose and mouth. It can be secured to the head with ties or straps or simply wrapped around the lower face. It can be made of a variety of materials, such as cotton, silk, or linen. A cloth face covering may be factory-made or sewn by hand or can be improvised from household items such as scarfs, T-shirts, sweatshirts, or towels. Individuals are encouraged to review CDC guidance on appropriate face coverings. Social distance, as referenced within this declaration amendment, shall mean the current parameters established by the Governor by Executive Order and by the

North Carolina Department of Health and Human Services, including as such parameters may be amended in the future.

(c) Face coverings are not required by someone who:

- 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);
- Is a child under two (2) years of age;
- Is a child under five (5) years of age and their parent, guardian, or responsible person has been unable to place and maintain a face covering safely on the child's face;
- Is actively eating or drinking;
- Is in a private, individual office;
- Is seeking to communicate with someone who is hearing-impaired in a way that requires the mouth to be visible;
- Is giving a speech or performance or a broadcast, or to an audience, where they maintain a distance of at least 20 feet from the audience;
- Is working at home or is in a personal vehicle;
- Is temporarily removing their face covering to secure government or medical services or for identification purposes or at the request of a law enforcement officer;
- Would be at risk for wearing a face covering at work, as determined by local, state, or federal regulations or workplace safety guidelines;
- 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;
- Has found that their face covering is impeding visibility to operate equipment or a vehicle; or
- Attends worship, religious, and spiritual gatherings; funeral ceremonies; wedding ceremonies; and other activities constituting the exercise of First Amendment rights.

(d) 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. However, everyone that is able is asked to wear a face covering so that they do not put other people at risk of serious illness or death. Businesses and other entities or institutions may accommodate exceptions if someone states that an exception applies by choosing to offer curbside service, provide home delivery, or use some other reasonable measure to deliver its goods or services.

### Section 3. Applicability.

The requirements established in this declaration amendment shall supplement and be in addition to the other requirements associated with the COVID-19 State of Emergency within the jurisdiction of Cumberland County and any municipality within Cumberland County for which a request is made by the mayor thereof and attached to this Amendment. For facilities owned or operated by other units of government, including the Federal, State, or any municipality, this declaration amendment shall not apply and rules for face coverings shall be set by the applicable unit of government.

### Section 4. Implementation.

The intent of this Declaration Amendment is to encourage voluntary compliance with the requirements established herein by businesses and persons within the jurisdiction of Cumberland County and any municipality within Cumberland County for which a request is made by the mayor thereof and attached to this Amendment. Law enforcement and other public safety and emergency management personnel are strongly encouraged to educate and encourage voluntary compliance with this order. Violation of this Declaration constitutes a Class 2 misdemeanor.

### Section 5. Distribution.

This Declaration Amendment shall be distributed to the news media and other organizations calculated to bring its contents to the attention of the general public, filed with the Clerk to the Board, posted in accordance with G.S. 166A-19.31(d), and distributed to others as necessary to ensure proper implementation of this declaration amendment.

Section 6. Effective Date and Time.

This declaration amendment shall take effect at 5:00 p.m., August 25, 2021, and shall remain in effect until modified or rescinded.

**HANDOUT #3**

**NEW HANOVER COUNTY  
HEALTH & HUMAN SERVICES**

**NOTICE TO ABATE PUBLIC HEALTH HAZARD**

The New Hanover County Public Health Director, pursuant to the provisions of the North Carolina General Statute 130A-19, 130A-20, and 130A-41, hereby gives notice to:

All Residents and Visitors to New Hanover County; that:

1. COVID-19 is a Public Health Hazard: Based on evidence documenting the significant and urgent danger to the health of residents and visitors from the rapidly rising incidence of COVID-19 cases, percent positive results from reported COVID-19 testing, and hospitalizations of county and regional residents with COVID-19 disease, COVID-19 is found to be a public health hazard to every resident and visitor to New Hanover County:
2. It is necessary to abate said hazard as follows: **Wearing of a face covering over the nose and mouth while in indoor public spaces, 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.**
3. Exceptions outlined in Appendix A.
4. Upon issuance of this notice, abatement of said hazard is required beginning Friday, August 20 at 5:00 PM;
5. This order will be on-going and shall not expire until such time a determination is made by the Health and Human Services Board regarding a public health Rule requiring face coverings for residents and visitors to New Hanover County, or until such time the percent of COVID-19 tests of New Hanover residents resulting positive reaches and remains at 5% or below for a period determined to have controlled transmission as to substantially protect public health, if this occurs before a public health rule is enacted.

**Appendix A:**

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

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.

MOTION: Commissioner Lancaster moved to adjourn.  
SECOND: Commissioner Council  
VOTE: UNANIMOUS (6-0)

There being no further business, the meeting adjourned at 10:48 a.m.

Approved with/without revision:

Respectfully submitted,

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Candice H. White  
Clerk to the Board