



NC DEPARTMENT OF
**HEALTH AND
HUMAN SERVICES**

ROY COOPER • Governor
MANDY COHEN, MD, MPH • Secretary

MAY 22, 2020

ORDER OF ABATEMENT OF IMMINENT HAZARD

WHEREAS, March 10, 2020, the Governor issued Executive Order No. 116 which declared a State of Emergency to coordinate the State's response and protective actions to address the Coronavirus Disease 2019 ("COVID-19") public health emergency and provide for the health, safety, and welfare of residents and visitors located in North Carolina; and

WHEREAS, on March 11, 2020, the World Health Organization declared COVID-19 a global pandemic; and

WHEREAS, on March 13, 2020, the President of the United States issued an emergency declaration for all states, tribes, territories, and the District of Columbia, retroactive to March 1, 2020, and the President declared that the COVID-19 pandemic in the United States constitutes a national emergency; and

WHEREAS, on March 25, 2020, the President of the United States, pursuant to Section 401 of the Stafford Act, approved a Major Disaster Declaration, FEMA-4487-DR, for the State of North Carolina; and

WHEREAS, more than twenty thousand people in North Carolina have had laboratory-confirmed cases of COVID-19, and hundreds of people in North Carolina have died from the disease; and

WHEREAS, hospital administrators and health care providers have expressed concerns that unless the spread of COVID-19 is limited, existing health care facilities may be insufficient to care for those who become sick; and

WHEREAS, the undersigned and the Governor have directed hospitals, physicians' practices, and other health care entities to undertake significant actions as part of North Carolina's emergency response to address the COVID-19 pandemic; and

WHEREAS, slowing and controlling community spread of COVID-19 is critical to ensuring that the state's healthcare facilities remain able to accommodate those who require medical assistance; and

WHEREAS, the continued community spread of COVID-19 within North Carolina requires the state to continue some measures to slow the spread of this virus during the pandemic; and

WHEREAS, in responding to the COVID-19 pandemic, and for the purpose of protecting the health, safety, and welfare of the people of North Carolina, the Governor has issued Executive Order Nos. 116-122, 124-25, 129-131, 133-136, and 138-141; and

WHEREAS, in Executive Order No. 118, issued on March 17, 2020, the Governor limited operations of restaurants and bars in response to COVID-19; and

WHEREAS, in Executive Order Nos. 121, 135, and 138, issued on March 27, 2020, April 23, 2020, and May 5, 2020, respectively, the Governor extended the limitations on restaurants and bars; and

WHEREAS, since the issuance of executive orders to slow the spread of COVID-19, North Carolina has “flattened the curve” and prevented a surge or spike in cases across the state, and North Carolina has also increased its capacity for testing, tracing and the availability of personal protective equipment (“PPE”); and

WHEREAS, despite the overall stability in key metrics, North Carolina’s daily case counts of COVID-19 continue to increase slightly in the context of increased testing, demonstrating the state must remain vigilant in its work to slow the spread of the virus; and

WHEREAS, the risk of contracting and transmitting COVID-19 is higher in settings that are indoors, where air does not circulate freely and where people are less likely to maintain social distancing by staying six (6) feet apart; and

WHEREAS, the risk of contracting and transmitting COVID-19 is higher in settings where people are stationary and in close contact for long periods of time; and

WHEREAS, the risk of contracting and transmitting COVID-19 is higher in gatherings of larger groups of people because these gatherings offer more opportunity for person-to-person contact with someone infected with COVID-19; and

WHEREAS, to lower the risk of contracting and transmitting COVID-19, this Order and Executive Order No 141 impose restrictions on businesses that limit the number of contacts between people, particularly in settings that are indoors, involve people being stationary and in close contact for long periods of time; and

WHEREAS, certain types of businesses by their very nature present greater risks of the spread of COVID-19 because of the nature of the activity, the way that people have traditionally acted and interacted with each other in that space, and the duration that patrons stay in the establishment; and

WHEREAS, people in North Carolina must remain flexible to account for the evolving nature and scope of the public health emergency posed by COVID-19, and also return to-in a safe, strategic, and incremental manner-their normal personal and professional activities, to the extent public health circumstances permit; and

WHEREAS, people in North Carolina are encouraged to take on the challenges of living in a community beset by a global pandemic, while also returning to school, work, and social activities in a safe, strategic and incremental manner to help reduce the risk of COVID-19 transmission; and

WHEREAS, businesses that are open during the duration of this Executive Order are encouraged to follow the Guidelines for Businesses published by NC DHHS and available electronically on its website; and

WHEREAS, food service and food availability remain an important component of North Carolina's response to the COVID-19 pandemic, such that food service providers, including restaurants and other dine-in facilities are encouraged to open to the extent practicable to safely provide food and nutrition to people in North Carolina; and

WHEREAS, with public health requirements in place and face coverings more readily available, personal care, grooming, and tattoo businesses may be reopened in a safe, strategic manner without raising unreasonable risk of COVID-19 spread; and

WHEREAS, NCDHHS has organized a Public Health Incident Management Team to manage the public health impacts of COVID-19 in this state; and

WHEREAS, under N.C. Gen. Stat. § 130A-2(3), an "imminent hazard" is defined as a situation that is likely to cause an immediate threat to human life, an immediate threat of serious physical injury, an immediate threat of serious adverse health effects, or a serious risk of irreparable damage to the environment if no immediate action is taken; and

WHEREAS, under N.C. Gen. Stat. § 130A-20(a), if the Secretary of Health and Human Service determines that an imminent hazard exists, the Secretary may order the owner, lessee, operator, or other person in control of the property to abate the imminent hazard; and

WHEREAS, on March 17, 2020, the Secretary of Health and Human Service issued an Order of Abatement requiring owners, lessees, operators, and other persons in control of a restaurant or bar to abate the imminent hazard for the spread of COVID-19 created by the use of seating areas in restaurants and bars; and

WHEREAS, on May 4, 2020, the Secretary of Health and Human Service renewed the Order of Abatement requiring owners, lessees, operators, and other persons in control of a restaurant or bar to abate the imminent hazard for the spread of COVID-19 created by the use of seating areas in restaurants and bars; and

WHEREAS, a rescission and replacement of the May 4, 2020 Order is necessary to continue protecting the health and safety of the residents of North Carolina, slowing the spread of the COVID-19 outbreak, protecting our most vulnerable citizens, and avoiding strain on our health care system as the State moves toward lifting restrictions; and

NOW, THEREFORE, by the authority vested in me pursuant to N.C. Gen. Stat. § 130A-20(a) as Secretary of the NCDHHS, I am declaring that restaurants, personal care, grooming, and tattoo businesses, and pools operating without restrictions required under Executive Order 141 to

control the spread of COVID-19 constitute an imminent hazard for the spread of COVID-19. I am also declaring that entertainment and fitness facilities, including bars, constitute an imminent hazard for the spread of COVID-19 under N.C. Gen. Stat. § 130A-2(3). For that reason, **IT IS ORDERED:**

Section 1. Restaurants

- (a) Owners, lessees, operators, or other persons in control of a restaurant may reopen seating areas, but are directed to operate in compliance with Section 6.C. of Executive Order No. 141. Restaurants that fail to comply with Section 6.C. of Executive Order No. 141 may be determined to constitute an imminent hazard under a subsequent Order.
- (b) For the purposes of this Order, restaurants are defined as permitted food establishments, under N.C. Gen. Stat. § 130A-248, and other establishments that both prepare and serve food. This includes, but is not limited to, restaurants, cafeterias, food halls, dining halls, food courts, and food kiosks. This includes not only free-standing locations but also locations within other businesses or facilities, including, but not limited to airports, shopping centers, educational institutions, or private or members-only clubs where food and beverages are permitted to be consumed on premises.

Section 2. Personal Care, Grooming, and Tattoo Businesses

- (a) Owners, lessees, operators, or other persons in control of a personal care, grooming, or tattoo business are directed to operate in compliance with Section 6.D. of Executive Order No. 141. Personal care, grooming, and tattoo businesses that fail to comply with Section 6.D. of Executive Order No. 141 may be determined to constitute an imminent hazard under a subsequent Order.
- (b) For the purposes of this Order, personal care, grooming, or tattoo businesses are defined as businesses that (A) do not provide health care services; and (B) either (i) have workers directly touch customers or (ii) have a piece of equipment (other than a touchscreen) repeatedly come into contact directly with customers' skin. This includes, but is not limited to, barber shops, beauty salons (including but not limited to waxing and hair removal centers), hair salons, nail salons, manicure or pedicure providers, tattoo parlors, tanning salons, and massage therapists.

Section 3. Pools

- (a) Owners, lessees, operators, or other persons in control of an indoor or outdoor pool are directed to operate in compliance with Section 6.E. of Executive Order No. 141. Indoor and outdoor pools that fail to comply with Section 6.E. of Executive Order No. 141 may be determined to constitute an imminent hazard under a subsequent Order.
- (b) For the purposes of this Order, the phrase “indoor and outdoor pools” is defined to apply to shared pools in commercial settings or at residential complexes. It does not apply to family pools at people's homes.

Section 4. Entertainment and Fitness Facilities, including Bars

- (a) Owners, lessees, operators, or other persons in control of an entertainment or fitness facility are directed to close, subject to the conditions and exceptions in Section 8.A., 8.B., 8.C., and 8.D. of Executive Order No. 141.
- (b) For the purposes of this Order, entertainment and fitness facilities are defined as including, but not limited to, the types of business set out in Section 8.A.2. of Executive Order No. 141. This includes bars.
- (c) For the purposes of this Order, bars are defined as establishments that are not eating establishments or restaurants as defined in N.C. Gen. Stat. §§ 18B-1000(2) and 18B-1000(6), that have a permit to sell alcoholic beverages for onsite consumption under N.C. Gen. Stat. § 18B-1001, and that are principally engaged in the business of selling alcoholic beverages for onsite consumption.

Section 5. Enforcement

Pursuant to N.C. Gen. Stat. §§ 130A-18 and 130A-25, failure to comply with this imminent hazard abatement order may result in injunctive relief or prosecution for a misdemeanor offense.

Section 6. Effective Date

This Order of Abatement rescinds and replaces the Order of Abatement issued on May 4, 2020 and is effective as of 5:00 pm, Friday, May 22, 2020. This Order remains in effect until rescinded or replaced.

I have hereunto signed my name, this the 22 day of May two thousand and twenty.



Mandy K. Cohen, MD, MPH
Secretary, NCDHHS