



NHMA Guidance Regarding Supplemental Information for Local Enforcement of Emergency Orders As Extended by Emergency Order #65

September 2, 2020

Emergency Order #65 expanded the role of local enforcement, particularly local health officers, in enforcing provisions of other Emergency Orders, including Emergency Order #52, pertaining to business operations, through the following provision:

“5. The Division of Public Health (DPH), working through its staff or **local health officers**, shall take necessary enforcement actions for violations of the Emergency Orders, including imposing civil penalties or immediately closing an event, activity, business, entity, organization, facility, or property.”

Questions have arisen regarding the recommended processes for local health officers acting to enforce provisions of the emergency orders.

The New Hampshire Attorney General’s Office recommends that local health officers follow the template outlined in the [March 27 Law Enforcement Memo](#): officers which find violations engage businesses informally at first to educate the business on what the restrictions are, why they are important, and provide a copy of the applicable guidance, prior to taking any sort of enforcement action. If that verbal warning is not effective to cause the business to implement changes, then the local health officer can send a written warning. (A sample of a written warning for a food establishment is provided by way of the Attorney General’s Office following this guidance document.)

If the written warning does not produce the desired effect, the Attorney General’s Office may provide its own warnings, including issuance of a final letter upon consultation with the local health officer. Typically, that letter outlines the violations, the evidence that the business is recklessly disregarding the relevant Emergency Order, and states that further enforcement action will be undertaken if non-compliance continues.

After that, and in cooperation with the local health officer, the Attorney General’s Office would impose civil penalties, or, in conjunction with the local Police Department, bring misdemeanor charge and/or initiate civil proceedings to seek a mandatory injunction to end the violation. The Attorney General’s Office must be involved when civil penalties are imposed, or criminal charges filed, or an injunction is sought to enforce any Emergency Order.

Questions from Law Enforcement Officers about enforcement of the Governor’s Orders should contact the Attorney General’s Office at: 931-9975.

Local health officers or other town officials that witness violations of the Governor’s Orders may contact the Attorney General’s Office at 603-271-1225.



Sample Restaurant Warning Letter
[Remember to Check Relevant Extensions of Emergency Orders and Executive Orders]

Date

Business' Name and address

Dear [business name or individual name of owner if known]

Pursuant to my position as [your official title], it has come to my attention that you are operating your [business] in [municipality] in violation of the Governor's Emergency Order #52, as extended by Emergency Order #66, issued pursuant to section 18 of Executive Order 2020-04, as extended through Executive Order 2020-16.

As [public health officials and/or police officers] have explained to you directly and repeatedly on [what is the time period of the compliance monitoring], restaurants and food services businesses must comply with the guidance documents under Restaurants and Food Services Industry Guidance, Exhibit B of Emergency Order #52, as extended by Emergency Order #66, and in effect until October 1, 2020. Based on our visits to your business, we learned that [explain the violations, such as: you are not requiring your employees to wear face coverings when having direct contact with customers]. This/These violation(s) has(have) been observed by multiple individuals on multiple occasions, including [list who has observed this, either complainants to you or your staff or local law enforcement]. These actions do not comply with the Governor's orders now in effect. Copies of Emergency Orders #52 and #66 are attached to this letter as well as Exhibit B to that Order, the Restaurant and Food Services Industry Guidance, governing the operation of the food service industry.

I write to impress the seriousness of this behavior upon you, and to ask you to operate your business in conformance with the law without jeopardizing both public health and safety, and the health and safety of your employees by violating Emergency Order #52. COVID-19 is an infectious disease that has already infected over 7,150 people in New Hampshire to date and caused 430 deaths. It is most commonly spread from an infected person to others through respiratory droplets including: through the air by coughing and sneezing; close personal contact such as touching or shaking hands; or touching an object or surface with the virus on it, then touching one's mouth, nose, or eyes before washing one's hands. COVID-19 may also be spread before an infected person shows symptoms of the virus. The CDC has extended their Slow the Spread Guidelines for COVID-19 and the New Hampshire Division of Public Health advises wearing face coverings while out in any public area, especially now while there continues to be community transmission of the virus. The seriousness of this disease correlates with the seriousness in violating any Emergency Order issued to curb the spread of this disease. The violation of an emergency order, rule, or regulation issued by the Governor may lead to criminal charges, pursuant to RSA 21-P:47 or civil penalties under Emergency Order #65, and you or your business may be subject to criminal or civil penalties if you violate Emergency Order #52.

You are now aware that [recite the violations, such as: not requiring your employees to wear face coverings at all times when having direct contact with customers] is a violation of Emergency Order #52, and would subject you to possible criminal and civil penalties. Please ensure that your [business] in [municipality] complies with that Order and do not otherwise put the public or your employees at risk.