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**Wise County and the
City of Norton**
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Wise, VA 24293
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COMMONWEALTH OF VIRGINIA

LENOWISCO HEALTH DISTRICT

134 Roberts Avenue SW
WISE, VIRGINIA 24293

Eleanor S. Cantrell, M.D.
District Director

**Stewards for Optimum
Community Health**

December 7, 2020

NOTICE OF VIOLATION OF EXECUTIVE ORDER(S) 67

Town of Pound
Attn: Jane Bennett
PO Box 880
Pound, VA 24283

Re: Executive Order 67 Violation

Dear Ms. Bennett:

This Notice of Violation of Executive Order 67 (Notice) is to inform you the Wise County/City of Norton Health Department (WCHD) received a complaint on December 6, 2020, indicating the Town of Pound violated Executive Order 67 by holding a Christmas parade which failed to follow the Executive Order Guidelines for Entertainment and Public Amusement. As a result, and to mitigate the spread of COVID-19, WCHD issues this Notice and below provides justification for doing so and recommendations for Executive Order compliance:

Chronology:

The information below provides context and background as to the basis for the actions contained herein.

1. Following the State Health Commissioner declaring COVID-19 a disease of public health threat on February 7, 2020, Virginia Governor Ralph S. Northam declared a state emergency due to COVID-19 on March 12, 2020, by Executive Order No. 51.
2. In an effort to contain, control, and prevent further spread of COVID-19, on March 17, 2020, Governor Northam announced additional measures to reduce unnecessary risks to citizens of the Commonwealth. Such measures included social distancing and reducing seating capacity of restaurants, fitness centers, and theatres.
3. On March 17, 2020, State Health Commissioner Oliver and Governor Northam issued a Declaration of Public Health Emergency (Order) as a result of the spread of COVID-19. The Order, in part, provided for suspensions of food establishment permits for imminent public health hazards associated with congregations of more than 10 total patrons in a restaurant.
6. On May 26, 2020, Governor Northam issued Executive Order 63 and State Health Commissioner Oliver issued Order of Public Health Emergency Five, requiring patrons to wear face coverings while inside public buildings. Specifically, Executive Order 63 authorized the Virginia Department of Health to enforce the order, stating: "Any willful violation or refusal, failure, or neglect to comply with this Order, issued pursuant to § 32.1-13 of the Code of Virginia, is punishable as a Class 1 misdemeanor pursuant to § 32.1-27 of the Code of Virginia. The State Health Commissioner may also seek injunctive relief in circuit court for violation of this Order, pursuant to § 32.1-27 of the Code of Virginia. No minor shall be subject to criminal penalty for failure to wear a face covering. Adults accompanying minors should use the adult's best judgment with respect to placing face coverings on a minor between the ages of two through nine while inside the public areas noted above. Adults

accompanying minors age 10 through 18 shall use reasonable efforts to prompt the minor to wear face coverings while inside the public areas noted above.”

8. On June 30, 2020, Governor Northam issued Executive Order 67 and State Health Commissioner Oliver issued Order of Public Health Emergency Seven, moving the Commonwealth into Phase 3 and easing the temporary restrictions due to COVID 19. Included in the order is the requirement that businesses require employees in customer-facing positions wear face coverings. The Order also provided, “The Virginia Department of Health shall have authority to enforce section A of this Order. Any willful violation or refusal, failure, or neglect to comply with this Order, issued pursuant to § 32.1-13 of the Code of Virginia, is punishable as a Class 1 misdemeanor pursuant to § 32.1- 27 of the Code of Virginia. The State Health Commissioner may also seek injunctive relief in circuit court for violation of this Order, pursuant to § 32.1-27 of the Code of Virginia. In addition, any agency with regulatory authority over a business listed in section A may enforce this Order as to that business to the extent permitted by law.”

10. On November 13, 2020, Governor Northam amended Executive Order 67 and State Health Commissioner Oliver amended Order of Public Health Emergency Seven (effective November 16, 2020), tightening Phase 3 temporary restrictions due to COVID 19. Included in the order is the requirement “[n]o alcoholic beverage shall be sold, consumed, or possessed on premises after 10:00 p.m. in any restaurant” and ordered “[c]losure of all dining and congregation areas in restaurants, dining establishments, food courts, breweries, microbreweries, distilleries, wineries, and tasting rooms between the hours of 12:00 a.m. and 5 a.m.” Also, the order declared “[a]ll public and private in-person gatherings of more than 25 individuals are prohibited.” Additionally, the order states essential retail businesses must comply with the Guidelines for All Business Sectors expressly incorporated by reference... and [e]mployers are required to provide face coverings to employees. If any such business cannot adhere to these requirements, it must close.” The Order also provided, “The Virginia Department of Health shall have authority to enforce section C of this Order. Any willful violation or refusal, failure, or neglect to comply with this Order, issued pursuant to § 32.1-13 of the Code of Virginia, is punishable as a Class 1 misdemeanor pursuant to § 32.1- 27 of the Code of Virginia. The State Health Commissioner may also seek injunctive relief in circuit court for violation of this Order, pursuant to § 32.1-27 of the Code of Virginia. In addition, any agency with regulatory authority over a business listed in section C may enforce this Order as to that business to the extent permitted by law.”

APPLICABLE LAW (in part):

§ 32.1-13. Emergency orders and regulations.

The Board may make separate orders and regulations to meet any emergency, not provided for by general regulations, for the purpose of suppressing nuisances dangerous to the public health and communicable, contagious and infectious diseases and other dangers to the public life and health.

§ 32.1-27. Penalties, injunctions, civil penalties and charges for violations.

A. Any person willfully violating or refusing, failing or neglecting to comply with any regulation or order of the Board or Commissioner or any provision of this title shall be guilty of a Class 1 misdemeanor unless a different penalty is specified.

B. Any person violating or failing, neglecting, or refusing to obey any lawful regulation or order of the Board or Commissioner or any provision of this title may be compelled in a proceeding instituted in an appropriate court by the Board or Commissioner to obey such regulation, order or provision of this title and to comply therewith by injunction, mandamus, or other appropriate remedy or, pursuant to § 32.1-27.1, imposition of a civil penalty or appointment of a receiver.

§ 44-146.17. Powers and duties of Governor.

The Governor shall be Director of Emergency Management. He shall take such action from time to time as is necessary for the adequate promotion and coordination of state and local emergency services activities relating to the safety and welfare of the Commonwealth in time of disasters.

The Governor shall have, in addition to his powers hereinafter or elsewhere prescribed by law, the following powers and duties:

(1) To proclaim and publish such rules and regulations and to issue such orders as may, in his judgment, be necessary to accomplish the purposes of this chapter including, but not limited to such measures as are in his judgment required to control, restrict, allocate or regulate the use, sale, production and distribution of food, fuel, clothing and other commodities, materials, goods, services and resources under any state or federal emergency services programs.

He may adopt and implement the Commonwealth of Virginia Emergency Operations Plan, which provides for state-level emergency operations in response to any type of disaster or large-scale emergency affecting Virginia and that provides the needed framework within which more detailed emergency plans and procedures can be developed and maintained by state agencies, local governments and other organizations.

He may direct and compel evacuation of all or part of the populace from any stricken or threatened area if this action is deemed necessary for the preservation of life, implement emergency mitigation, preparedness, response or recovery actions; prescribe routes, modes of transportation and destination in connection with evacuation; and control ingress and egress at an emergency area, including the movement of persons within the area and the occupancy of premises therein.

Executive orders, to include those declaring a state of emergency and directing evacuation, shall have the force and effect of law and the violation thereof shall be punishable as a Class 1 misdemeanor in every case where the executive order declares that its violation shall have such force and effect.

Such executive orders declaring a state of emergency may address exceptional circumstances that exist relating to an order of quarantine or an order of isolation concerning a communicable disease of public health threat that is issued by the State Health Commissioner for an affected area of the Commonwealth pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of Title 32.1.

SIXTH AMENDED NUMBER SIXTY-SEVEN (2020) AND ORDER OF PUBLIC HEALTH EMERGENCY SEVEN

PHASE THREE TIGHTENING OF CERTAIN TEMPORARY RESTRICTIONS DUE TO NOVEL CORONAVIRUS (COVID-19); issued by Governor Ralph S. Northam and Health Commissioner M. Norman Oliver. (Amended November 13, 2020)

Directive

Therefore, by virtue of the authority vested in me by Article V of the Constitution of Virginia, by § 44-146.17 of the Code of Virginia, by any other applicable law, and in furtherance of Amended Executive Order 51 (2020), and by virtue of the authority vested in the State Health Commissioner pursuant to §§ 32.1-13, 32.1-20, and 35.1-10 of the Code of Virginia, the following is ordered:

Observations and factual understanding:

1. Pictures of this event posted on social media accounts depict crowds of people, likely not from the same family, gathered closer than six feet from one another.
2. Pictures posted on social media depict dozens of attendees and participants potentially exposed to COVID-19 by this event.

Recommendations

WCHD recommends you take the following steps to address your failure to comply with the terms of Executive Order 67:

1. It is safer to not hold these type of mass gathering events in the future. If a similar event is planned, it must strictly adhere to the included Guidelines in place at the time of the event, which include posting signage excluding anyone with symptoms of COVID-19, signage reminding patrons they must wear a face covering, and signage reminding patrons of the need to socially distance. Ten feet of separation must be maintained between performers, participants and patrons. Create a guest flow plan of modified queue lines to the event. Ensure a reduction of bottlenecks at exits. Customer-facing participants must wear face coverings. There are other requirements that may apply within the attached Guidelines.

This Notice sets forth above WCHD's observations, alleged violations of Executive Order 67 and provides recommended actions. Please be advised if the violations alleged are not remedied or violations continue, WCHD will seek enforcement action pursuant to Executive Order 67, including Class 1 criminal misdemeanor and civil injunctive relief. .

Please contact me Brad Stallard, Environmental Health Supervisor at (276) 328-1933 or via at brad.stallard@vdh.virginia.gov should you have questions or wish to discuss this Notice, including recommended actions.

Sincerely,

A handwritten signature in black ink, appearing to read 'B. Stallard', with a long horizontal flourish extending to the right.

Brad Stallard
Environmental Health Manager

Cc: Department of Labor and Industry

Attach: Safer at Home: Phase III Guidelines for Entertainment and Public Amusement
Safer at Home: Phase III Guidelines for Social Gatherings
Executive Order 67