

SUMMARY OF NC EXECUTIVE ORDER 138 RELATED TO DOING BUSINESS – PHASE 1

The information listed below refers to specific Executive Orders signed by Governor Roy Cooper.

The full text of these orders can be accessed via this link:

<https://www.nc.gov/covid-19/covid-19-executive-orders>

Executive Order 138 Section 3 (A)	Order for Businesses and Parks
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Most Businesses and Organizations Can Be Open. All businesses that are not closed under Section 5 may operate. Some businesses must operate under restrictions, as stated in Sections 3, 4, 6, and 7 of this Executive Order.

Executive Order 138 Section 3 (B)	Requirements Specific to Retail Businesses
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Retail Businesses that operate during the effective period of this Executive Order must:

1. Limit customer occupancy to not more than 50% of stated fire capacity. Retail Businesses that do not have a stated fire capacity must limit customer occupancy to twelve (12) customers for every one thousand (1,000) square feet of the location's total square footage, including the parts of the location that are not accessible to customers.
2. Limit customer occupancy so that customers can stay six (6) feet apart, even if this requires reducing occupancy beneath the 50% limit stated above.
3. Direct customers to stay at least six (6) feet apart from one another and from workers, except at point of sale if applicable.
4. Mark six (6) feet of spacing in lines at point of sale and in other high-traffic areas for customers, such as at deli counters and near high-volume products.
5. Perform frequent and routine environmental cleaning and disinfection of high-touch areas with an EPA-approved disinfectant for SARS-Co V-2 (the virus that causes COVID-19).
6. Provide, whenever available, hand sanitizer (at least 60% alcohol); systematically and frequently check and refill hand sanitizer stations; and provide soap and hand drying materials at sinks.
7. Conduct daily symptom screening of workers, using a standard interview questionnaire of symptoms, before workers enter the workplace.
8. Immediately send symptomatic workers home.
9. Have a plan in place for immediately isolating workers from the workplace if symptoms develop.
10. Post signage at the main entrances that reminds people to stay six (6) feet apart for social distancing, requests people who are or who have recently been symptomatic not to enter, and notifies customers of the Retail Business's reduced capacity.

The North Carolina Department of Health and Human Services ("NCDHHS") will make available on its website a sample screening checklist questionnaire and sample signs that may be used to meet the requirements above. Retail Businesses do not need to use the NCDHHS sample questionnaires and signs to meet the requirements of this Executive Order.

Executive Order 138 Section 3 (C)	Additional Recommendations Specific to Retail Businesses
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Retail Businesses that operate during the effective period of this Executive Order are strongly encouraged to do the following:

1. Direct workers to stay at least six (6) feet apart from one another and from customers, to the greatest extent possible.
2. Provide designated times for seniors and other high-risk populations to access services.

3. Develop and use systems that allow for online, email, or telephone ordering, no-contact curbside or drive-through pickup or home delivery, and contact-free checkout.
4. High-volume Retail Businesses, such as grocery stores and pharmacies, are strongly encouraged to take the following additional measures to reduce transmission:
 - a. Use acrylic or plastic shields at cash registers.
 - b. Clearly mark designated entry and exit points.
 - c. Provide assistance with routing through aisles in the store.
5. Take all the additional actions listed in Subsection 3(D) below.

Executive Order 138 Section 3 (D) Recommendations for All Retail Businesses (Retail or Other)
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All businesses that operate during the effective period of this Executive Order are strongly encouraged to:

1. Continue to promote telework and limit non-essential travel whenever possible.
2. Promote social distancing by reducing the number of people coming to the office, by providing six (6) feet of distance between desks, and/or by staggering shifts.
3. Limit face-to-face meetings to no more than ten (10) workers.
4. Promote hygiene, including frequent hand-washing and use of hand sanitizer.
5. Recommend workers wear cloth Face Coverings; provide workers with Face Coverings; and provide information on proper use, removal, and washing of cloth Face Coverings. A Face Covering functions to protect other people more than the wearer.
6. Make accommodations for workers who are at high risk of severe illness from COVID-19, for example, by having high-risk workers work in positions that are not public-facing or by allowing teleworking where possible.
7. Encourage sick workers to stay home and provide support to do so with a sick leave policy.
8. Follow the CDC guidance if a worker has been diagnosed with COVID-19.
9. Provide workers with education about COVID-19 prevention strategies, using methods like videos, webinars, or FAQs.
10. Promote information on helplines for workers such as 211 and the Hope4NC Helpline.

Executive Order 138 Section 4 Orders for Restricted Business Types

For the reasons and pursuant to the authority set forth above, the undersigned orders as follows:

A. Restaurants.

1. **Restaurants may remain open if consumption occurs off-premises.** Restaurants may do business only to the extent that consumption of food and beverages occurs off-premises through such means as in-house delivery, third-party delivery, drive-through, curbside pick-up, and carry-out. Schools and other entities that provide free food services to students or members of the public may continue to do so under this Executive Order when the food is provided for carry-out, drive-through, or delivery.
2. **Restaurants should follow social distancing and transmission reduction recommendations.** Restaurants are encouraged to comply with the Recommendations to Promote Social Distancing and Reduce Transmission, including use of Face Coverings, when providing carry-out, drive-through, and delivery services. These coverings function to protect other people, more than the wearer.
3. **Further orders.** The Governor, in consultation with and at the recommendation of the Secretary of Health and Human Services, the State Emergency Management Director, and the State Health Director, orders the following limitations on the sale of food and beverages to carry-out, drive-through, and delivery only:
 - a. The Secretary of Health and Human Services, pursuant to N.C. Gen. Stat. § 130A-20(a), has determined that the seating areas of restaurants and bars constitute an imminent hazard for the spread of COVID-19 and that, to abate the imminent hazard, restaurants must be restricted to

carry-out, drive-through, and delivery only and bars must close, and has issued an order of abatement dated May 4, 2020.

- b. The undersigned directs that restaurants are restricted to carry-out, drive-through, and delivery only.
4. **No sit-down service.** Sit-down food or beverage service is prohibited at any kind of businesses, including but not limited to grocery stores, pharmacies, convenience stores, gas stations and charitable food distribution sites.

B. Bars.

1. Bars are directed to not serve alcoholic beverages for onsite consumption.
2. This Executive Order does not direct the closure of retail beverage venues that provide for the sale of beer, wine, and liquor for off-site consumption only. It also does not require the closure of production operations at breweries, wineries, or distilleries.
3. If the Alcoholic Beverage Control Commission (the "ABC Commission") identifies other state laws, regulations, and policies that may affect bars, restaurants, and other dining establishments identified in Subsections 4(A)-(B) of this Executive Order, it is directed to inform the Office of the Governor in writing. Upon written authorization from the Office of the Governor, the ABC Commission may interpret flexibly, modify, or waive those state laws, regulations and policies, as appropriate, and to the maximum extent permitted under applicable state and federal law, to effectuate the purposes of this Executive Order.

C. Child Care.

1. **Must operate in compliance with NCDHHS guidelines.** Child care facilities may be open only if they operate in full compliance with Executive Order No. 130 and all guidelines issued by NCDHHS.
2. **Expanding children that may be served.** The relevant language in Subsection 2(C) of Executive Order No. 130 is amended and replaced by the following:
 - a. **Children that may be served.** Child Care Facilities approved by NCDHHS to operate under the Emergency Facility Guidelines shall provide child care only to the following persons:
 1. Children of anyone who performs work on behalf of a business or operation that is not closed by an Executive Order; or
 2. Children of anyone who is leaving the home to seek employment; or
 3. Children who are receiving child welfare services; or
 4. Children who are homeless or who are living in unstable or unsafe living arrangements.
3. **Term.** Section 2 of Executive Order No. 130 shall remain in effect through 5:00 pm on May 22, 2020.

D. Day Camps and Programs for Children and Teens.

1. Must operate in compliance with NCDHHS guidelines. Day camps and programs may operate only if they are in full compliance with the Interim Coronavirus Disease 2019 (COVID-19) Guidance for Day Camp or Program Settings Serving Children and Teens. Day programs and camps for adults are not covered by this section.
2. No sports or other activities without social distancing. Day camps and programs may not allow sports except for sports where close contact is not required, and day camps may not allow activities where campers would not maintain at least six (6) feet social distancing from one another.
3. Day camps within another business or operation. Day camps and programs operating within a business, facility, or location closed by Subsection 5(B) of this Executive Order or at a school may open for the purpose of the day camp or program, but must otherwise remain closed to the general public. To the extent day camps permit swimming by camp attendees, local health departments may permit the pool's usage for attendees of the day camp, but not for the general public.
4. No overnight camps. Overnight camps and programs for children or adults may not operate.

E. Schools.

1. School facilities remain closed for in-person instruction. Consistent with Executive Orders No. 117 and 120, public school facilities are to remain closed as in-person instructional settings for students for the remainder of the 2019-2020 school year.
2. School and health officials to continue efforts. NCDHHS, the North Carolina Department of Public Instruction ("NCDPI"), and the North Carolina State Board of Education are directed to continue to work together to maintain and implement measures to provide for the health, nutrition, safety, educational needs, and well-being of children during the school closure period.
3. Graduation and other year-end ceremonies. Local school boards and superintendents will determine whether to conduct graduation and/or other year-end ceremonies. If local school leaders elect to hold graduation ceremonies or similar events, then those gatherings must operate in compliance with Executive Orders and NCDPI/NCDHHS guidelines in effect at the time of the event. Local school leaders are encouraged to engage with students and families to identify the best solutions for their communities. Local plans should include consultation with local public health officials and, where appropriate, local law enforcement.

Executive Order 138 Section 5 **Orders for Business to Remain Closed**

A. Personal Care and Grooming Businesses.

1. The ability to practice the social distancing necessary to reasonably protect against COVID-19 is significantly reduced in certain establishments where individuals are in extended close proximity or where service personnel are in direct contact with clients. Therefore, personal care and grooming businesses, including but not limited to the following, are ordered to close:
 - Barber Shops
 - Beauty Salons (including but not limited to waxing and hair removal centers)
 - Hair Salons
 - Nail Salons/Manicure/Pedicure Providers
 - Tattoo Parlors
 - Tanning Salons
 - Massage Therapists (except that massage therapists may provide medical massage therapy services upon the specific referral of a medical or naturopathic healthcare provider).

B. Entertainment Facilities without a Retail or Dining Component.

1. In addition to the restrictions on Mass Gatherings identified in Section 6 of this Executive Order, entertainment facilities that operate within a confined indoor or outdoor space and do not offer a retail or dining component are ordered to close. Any retail or dining component within an entertainment facility may operate solely for retail or dining, but those components must comply with the restrictions set out in Subsection 4(A) of this Executive Order.
2. Entertainment facilities restricted by this Subsection include, but are not limited to, the following types of business:
 - Bingo Parlors, including bingo sites operated by charitable organizations
 - Bowling Alleys
 - Indoor Exercise Facilities (e.g., gyms, yoga studios, martial arts facilities, indoor trampoline and rock climbing facilities)
 - Health Clubs, Fitness Centers, and Gyms
 - Indoor/Outdoor Pools
 - Live Performance Venues
 - Movie Theaters
 - Skating Rinks
 - Spas, including health spas

- Gaming and business establishments which allow gaming activities (e.g., video poker, gaming, sweepstakes, video games, arcade games, pinball machines or other computer, electronic or mechanical devices played for amusement).

May 6, 2020 update:

Governor Roy Cooper signed [Executive Order 138](#) on May 5, 2020, which is effective May 8, 2020 at 5 p.m. Under the order, which supersedes [Executive Order 121](#), there will no longer be “essential business” designations.

As a result, the North Carolina Department of Revenue will no longer have authority to determine whether a business is allowed to operate under the new order and, therefore, is no longer accepting applications from businesses seeking to be deemed essential.

All businesses, regardless of a previous NCDOR designation, are governed by [Executive Order 138](#) once effective, including any businesses that must be closed under that order. Please refer to the order for guidance.

Law enforcement agencies are responsible for enforcement of the Executive Order and should address individual citizen concerns about local business operations.

Questions may be directed to Essential.Exemptions@ncdor.gov

[COVID-19 GUIDANCE – FOR BUSINESSES & ADDITIONAL RESOURCES](#)

Phase 1-Easing of Restrictions - NCDHHS

- [Executive Order 138](#) (FAQs)
- [What Phase One Means for North Carolina](#) (Spanish)
- Interim Guidance for Owners, Staff, and Patrons of Businesses (May 6, 2020 - [English](#) | [Spanish](#))
- FAQs on Cloth Face Coverings ([English](#), [Spanish](#))
- NCDHHS Checklist for Business Owners ([English](#), [Spanish](#))
- Signage for Businesses
 - Know Your W's (English - [Full Color](#), [Black-White](#); Spanish - [Full Color](#), [Black-White](#))
 - Maximum Occupancy (English - [Full Color](#), [Black-White](#); Spanish - [Full Color](#), [Black-White](#))
- Stay Strong Flyer (English - [Full Color](#), [Black-White](#); Spanish - [Full Color](#), [Black-White](#))
- Symptom Screening Checklist ([English](#), [Spanish](#))