

**SENECA COUNTY COVID RESPONSE**  
**Joint Protocol for COVID-19 Safety Regulation Enforcement**

The purpose of this protocol is to establish a sequential process involving the Seneca County Health Department, other Seneca County Departments, local law enforcement agencies, and our elected leaders in responding to complaints concerning COVID-19 related social distancing, masking at businesses in our community, and issues as to non-essential gatherings. Through joint cooperation and collaboration, the Health Department will take the lead role in complaints related to business activities within their regulatory scope. Other designated county workers may be involved in investigation of complaints as determined by appropriate jurisdiction and responsibility. All information concerning complaints shall be maintained in the County Manager's Office in conjunction with the Public Health Department. This includes NY State COVID-19 hotline reports, as well as local direct contacts.

All complaints received from any source will be referred to the Office of the County Manager and added to the Covid Complaint Worksheet. All complaints will be reviewed by the Covid Response Committee for assessment of validity as part of the procedures outlined below.

**Step 1** - The complaint will be reviewed and referred to the Town and/or County Supervisor where the complaint originates. When a Town/County Supervisor agrees to respond to a complaint, the Committee will take no action until a report is provided by the Supervisor, which should be provided to the County Manager's Office for forwarding to the Committee within 3-5 days or sooner.

Thereafter, any further investigation of the complaint will be done by Public Health personnel or other designated county workers, to be completed and reported as soon as practicable. A written summary of the investigation shall be prepared on the specific Health Department record form and kept with the complaint records at the County Manager's office. At all times, but particularly with a

first complaint, every effort shall be made to provide the subject of the complaint additional education, materials, and guidance for compliance with the COVID-19 prevention measures. The subject of the complaint will be advised to contact the Public Health Office as well as refer them to NY FORWARD for further guidance or questions as necessary.

#### **THE PURPOSE OF STEP 1 IS EDUCATION, COMMUNICATION AND COMPLIANCE**

**Step 2** – Upon the receipt of a second verified complaint, or as the result of a compliance visit, a formal Letter of Warning shall be issued through the Health Department reminding the subject that a failure to comply with the COVID-19 requirements may result in fines and other sanctions. However, information shall again be provided, including a continued offer of education and assistance.

#### **THE PURPOSE OF STEP 2 IS COMPLIANCE AND CLEAR WARNING OF POSSIBLE SANCTIONS**

**Step 3** – Upon the receipt of a third verified complaint or a follow-up compliance visit, the matter will be referred for review by the Committee. At the direction of the Committee, a Notice of Violation (NOV) or other action pursuant to Public Health Law 12-b shall be taken to bring the business or entity into compliance. A NOV will be sent to set forth the maximum sanction provided by statute or regulation. It will also provide notice to the subject of the complaint that a Consent Order in lieu of Administrative Hearing is available.

#### **NO SANCTION OR PENALTY IS IMPOSED SOLELY ON AN ANONYMOUS COMPLAINT. COMPLIANCE**

#### **AND DETERRENCE IS THE PURPOSE OF STEP 3 AND BEYOND**

#### **SANCTION PROCESS**

When the Committee determines that a Notice of Violation (NOV) is needed to enforce the COVID-19 prevention requirement, or otherwise, the Director, after consultation with legal counsel, a Notice of Violation (“NOV”) will issue a Notice of Violation and have this served upon the subject of the complaint. The NOV will specify the regulation that was violated, with the date, time and general nature of the

violation. The maximum penalty that may be imposed if the complaints are upheld by the Hearing Officer will be included in the letter. The subject of a violation has the right to a hearing by a designated administrative hearing officer appointed by the Board of Health. A violation may be sustained by the “preponderance of the evidence” standard. Hearsay is admissible evidence in an administrative proceeding, but the weight given to the evidence is in the discretion of the hearing officer. The subject may call witnesses or testify on their own behalf. Cross-examination of witnesses is permitted.

If the violation is determined to have been committed, the hearing office recommends a sanction to be imposed, within the restrictions of the Public Health Law or regulations. The county representative appearing before the Hearing Officer will recommend to the Hearing Officer sanctions as set forth below, with the understanding that the Hearing Officer is not bound by such recommendation.

The Board of Health reviews the recommendation of the hearing officer and may confirm the violation and sanction, or make an alternative decision. In lieu of proceeding to a hearing, the Subject may be allowed to enter into a “CONSENT AGREEMENT and ORDER”, whereby the Subject admits to the violation or violations, agrees to come into compliance with the outstanding issues, and further agrees to other terms as may be appropriate based upon the nature of the violations. The Director, after consultation with the Committee, may offer the subject a “Consent Order or Stipulation” wherein the Subject consents to the finding of the violation in exchange for a specified sanction. Typically this consent order will provide for suspended or reduced monetary penalty from the maximum. The Consent Order is ratified or rejected by the Board of Health at their discretion.

Monetary sanctions under this provision are established for Subjects as follows:

Offense Level	<u>Individual</u>	<u>Small Business</u>	<u>Larger Business/Chains/Franchise</u>
1 <sup>st</sup> NOV	\$50.00	\$100.00	\$500.00
2 <sup>nd</sup> NOV	\$100.00	\$250.00	\$1,000.00
3 <sup>rd</sup> NOV	\$250.00	\$500.00	\$1,500.00

4<sup>th</sup> or subsequent violations are subject to maximum sanction per law or regulation.

**\*Note 1:** Small Business shall include business operations with 25 or fewer employees, and not a “chain” or “franchise” operation.

**Note 2:** All monies recovered by the Health Department via penalties or fines must be reported to the State Health Department. This may form the basis for a deduction or offset from future funding from the state to the local department.

In addition, 2<sup>nd</sup> or further verified complaints or incidents may provide for other sanctions, which may include but not limited to: compliance issues reported to appropriate licensing/regulating agencies; other agency or department actions to include reduction of occupancy or withdrawal of certificate of occupancy; judicial intervention for civil sanctions or injunctive relief; or referral for criminal prosecution.

This protocol will go into effect upon approval by the Board of Supervisors. It is further understood that this protocol is under continuous review by the Covid Response Committee for recommendation to the Board of Supervisors for further action.

## OUTLINE OF RESPONSIBILITY AND ORGANIZATION

The Seneca County Public Health Director (“Director”) is considered the “action” or otherwise responsible person for all public health matters related to the COVID 19 pandemic response, just as in any public health related matter. When not available, the Deputy Director or the Director’s designee acts with the authority of the Director.

The County Manager shall act as the administrative coordinator for the Covid Response Committee. The County Manager and the Chairman of the Board of Supervisors provide additional guidance and direction via their involvement with the Finger Lakes Control Room/NY Forward.

The Chairman of the Board of Supervisors will appoint members to the COVID Response Committee who in turn will name a Chairperson to lead the actions and decisions of the Committee. As of this date, the members of the Covid Response Committee are:

Chairman, Tom Murray, Supervisors Borst, Enslow Ferrara and Garlick-Lorenzetti, County Attorney Ettman, Director of Public Health Swinehart, Director of Environmental Services King, Director of Emergency Management Taylor and County Manager Mitchell Rowe.

Certain basic concepts to the compliance and, as necessary, enforcement process:

- 1) The primary goal of the COVID-19 pandemic response program is to minimize the spread of the disease through identified practices and defined guidelines for the community as a whole.

- 2) Continual efforts to educate the community on the required programs and regulations.
  
- 3) Work with business and the community to assist them in trying to maintain as close to normal operational levels as possible within the regulatory constraints.
  
- 4) Be positive and proactive to avoid the need for sanctions.
  
- 5) No sanction or penalty is imposed solely on an anonymous complaint. All sanction actions require objective evidence of non-compliance sufficient to proceed at an administrative hearing.