**From:** esthermanheimer@avlcouncil.com
**To:** Brownie W. Newman
**Subject:** FW: Face Coverings
**Date:** Monday, May 18, 2020 3:13:13 PM

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FYI

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**From:** Brad Branham <bbranham@ashevillenc.gov>
**Sent:** Monday, May 18, 2020 11:25 AM
**To:** Esther Manheimer <esthermanheimer@avlcouncil.com>
**Cc:** Debra Campbell <dcampbell@ashevillenc.gov>
**Subject:** Face Coverings

Mayor,

I have reviewed the current Stay Home Order issued by Durham County. Section 2(C)(10) of the Order mandates the wearing of face coverings. Some important aspects of this provision are as follows:

* As with all social distancing and sanitization requirements, wearing face coverings is limited to "all times reasonable."
* Applies anytime you come in contact with other people, in public or private, who are not members of the same household.
* Applies ONLY when it is not possible to otherwise socially distance.
* Transit riders are included in the requirement, but no one will be denied or removed for failure to comply.
*Individual outdoor exercise (or exercise with household members) is excluded from the requirement.

The order specifies that the requirements will be enforced criminally, including the closure of businesses which do not comply.

I spoke with the County Attorney in Durham this morning. He tells me that for the few weeks that this has been in effect, that they have had up to 70% compliance. Importantly, he notes that they have taken a very hands off approach to enforcement. Although the Order calls for criminal penalties, the County and City are writing no tickets yet. If any issue of non-compliance pops up, they will try to "educate" that individual or business as opposed to enforcing the requirements. Therefore, in practice, the face covering requirement is really being encouraged rather than mandated. As of yet, they haven't had any legal challenges or threats, and believe this approach is working well.

I am fairly confident that, given the CDC guidance on the issue, we would have the legal authority to include a mandate to wear masks. Pursuant to § 166A-19.31, we have the authority to prohibit or restrict " ... *activities or conditions the control of which may be reasonably necessary to maintain order and protect lives or property during the state of emergency.*" So long as such a restriction was

enforced consistently and only to the extent necessary, it would likely be legally defensible. I do, however, have some concern about the transit aspect of this. I believe some legal issues may present themselves if we mandate face coverings for riders without providing a mask to those who do not have them. However, I'm equally concerned about including an exception as Durham County did. That could potentially call into question the legal legitimacy of at least that portion of the provision, if not the whole thing. I would suggest that if a face covering requirement was imposed on transit riders, that we be prepared to provide masks to them. In the alternative, we should exercise caution in enforcing in that area, but don't include a written exception.

Please let me know if you have any additional questions or concerns.

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