

August 26, 2021

**Re: Proposed Mecklenburg County Board of Health rule
dated August 18th, 2021**

Chairman Dunlap:

The CDC guidelines and state health rules do not currently require all citizens to wear face coverings while indoors. A local board of health may only adopt a “more stringent” health rule in an area regulated by the North Carolina Commission for Public Health where, in the opinion of the local board of health, a more stringent rule is required to protect the public health; otherwise, the rules of the Commission for Public Health shall prevail.¹ This standard requires that the local board of health clearly articulate, with specificity, the particular circumstances warranting a stricter public health standard in the community than as applied in other communities within the state.²

The health rule proposed by Mecklenburg County Board of Health on August 18th, 2021 includes various percentages regarding the rise in positive COVID-19 cases within Mecklenburg County, but does not include the source of the data. Nor does the proposed rule include any comparative data from other North Carolina communities sufficient to support a finding that a more stringent health rule is necessary within Mecklenburg County as compared to other jurisdictions within the state. Lacking such justification, proposed rules are not legally permissible and are preempted by the state regulations.³

Secondly, the North Carolina Court of Appeals set forth a five-part test, often referred to as the *Peedin* test, to determine the validity of rules promulgated by local boards of health.⁴ Specifically, rules proposed by local boards of health must:

1. Be related to the promotion or protection of health,
2. Be reasonable in light of the health risk addressed,
3. Not violate any law or constitutional provision,
4. Not be discriminatory, and
5. Not make distinctions based upon policy concerns traditionally reserved for legislative bodies.

¹ N.C. Gen. Stat. § 130A-39(b). Currently, state rules do not require face coverings while indoors.

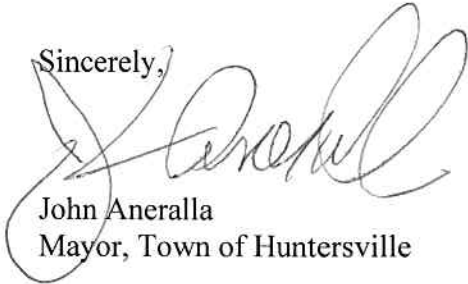
² See *Craig v. Cty. of Chatham*, 356 N.C. 40, 51-52 (2002).

³ “[L]ocal boards of health have no authority under the provisions of N.C.G.S. §130A-39(b) to superimpose additional regulations without specific reasons clearly applicable to a local health need.” *Id.*

⁴ *City of Roanoke Rapids v. Peedin*, 124 N.C. App. 578 (1996).

The Town of Huntersville understands that the proposed health rule, which will require that face coverings be worn indoors by both vaccinated and unvaccinated citizens until certain criteria are met, will go into effect on August 31st, 2021. However, I respectfully ask that, for transparency purposes, you provide rationale describing how the rule meets the requirements of N.C.G.S. § 130A-39(b) and the *Peedin* test as described above.

Sincerely,

A handwritten signature in black ink, appearing to read "John Aneralla". The signature is fluid and cursive, with a large initial "J" and "A".

John Aneralla
Mayor, Town of Huntersville