

BERRIEN COUNTY COMMISSIONERS

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FOR IMMEDIATE RELEASE

BERRIEN COUNTY NEWS RELEASE – COUNTY PUBLIC HEALTH ORDER

On September 1, 2021, the Acting Berrien County Health Officer issued a Public Health Order (Order) requiring that face masks be worn in all pre-kindergarten through 12th grade educational settings by students and staff. The Order applies while inside any enclosed structure, regardless of vaccination status. At a recent Board of Commissioners meeting, numerous verbal and written public comments were submitted about the masking order. Please know, the Board of Commissioners welcomes and values public participation, but there are limits on what actions the County can take in this matter.

Following issuance of the Order, the County obtained opinions from its legal team and canvassed neighboring counties concerning the legal authority of county health officers to issue health orders of this type. Our legal team determined that the Board of Commissioners and the County Administrator have no authority to intervene in the Health Officer's performance of her statutory duties under Michigan's Public Health Code. This is consistent with the findings from other counties.

The Public Health Code, enacted in 1978, states that a local health officer, which include the County Health Officer, "may take actions and make determinations necessary or appropriate to carry out the local health department's functions . . . and to protect the public health and prevent disease." (Michigan Compiled Laws, 333.2428(2)). Also, "upon a determination that an imminent danger to the health or lives of individuals exists . . . the local health officer immediately shall inform the individuals affected by the imminent danger and issue an order . . . to avoid, correct, or remove the imminent danger" (Michigan Compiled Law, 333.2451 (2)). The Health Code additionally provides that a violation of a local health officer's order constitutes a misdemeanor (Michigan Compiled Law, 333.2443). It was under this statutory authority that the Health Officer issued her September 1 masking order.

Note, due to the provisions of the Michigan Public Health Code, the Berrien County Board of Commissioners:

- Does not have authority over local public health orders.
- Does not have authority to remove a health officer for issuing a masking order pursuant to the above provisions of the Public Health Code.
- May face legal action if the Commissioners interfere with implementation of the Public Health Order.
- May not defund the Health Department in an effort to block the public health order. If the County defunds, the State may move in to assume control of the Health Department.

In summary, the County Administrator and the Board of Commissioners have no legal power to in any way intervene in or block the September 1 Public Health Order. Citizens are encouraged to share their opinions and concerns about the state laws which grant authority to local public health officers with state lawmakers in Lansing.