



June 18, 2020

Governor Roy Cooper
North Carolina Office of the Governor
20301 Mail Service Center
Raleigh, NC 27699-0301

SENT VIA ELECTRONIC MAIL TO ROY.COOPER@NC.GOV

Dear Governor Cooper:

Thank you for your continued leadership during these difficult times. The North Carolina Retail Merchants Association (NCRMA) and its 2,500 members represent more than 25,000 store locations across North Carolina in a diverse set of industry sectors.

We recognize this is a trying time for government and government officials, particularly those in counties and localities where significant outbreaks continue to occur. We also understand there is complexity in balancing public health and economic health.

North Carolina retailers operating during this crisis are continuing to do everything possible to ensure the health and safety of their employees, customers, their families, and their communities. North Carolinians depend on them to continue to provide products and services needed by those on the front lines of fighting COVID-19 and beyond. These businesses are also supplying items that contribute to the supply chain of products and services that are necessary for both comfort and survival – for all of us – during this challenging time.

I write today in response to your consideration of requiring face coverings and acknowledge that this is a significant action that requires thoughtful deliberation. This letter is prompted by the potential for a requirement to be implemented in some regard. Under that scenario, our members respectfully request that it be made clear that private businesses are not the enforcement authority for this requirement and also request uniformity across the state.

Nationwide, we have seen increased reports of violent altercations in businesses when front-line workers are required to enforce mask requirements. Multiple shootings, along with physical and verbal abuse have stemmed from disgruntled citizens taking out their frustrations on employees trying to enforce compliance with COVID restrictions within their business. Employees are placed in a precarious position if they are expected to be the enforcement arm of compliance. In North Carolina, we have already seen local governments imposing mask requirements with noted exceptions for health, religion, or disabilities. These exceptions have been included thoughtfully by these local governments. However, any expectation for a business to then enforce this requirement with noted exceptions is a near impossibility. In many cases, such as under the Americans with Disabilities Act (ADA), businesses are legally precluded from asking detailed questions of someone entering their business as to why they may not be wearing a face covering.

Just as with previous executive orders, it should be the duty of law enforcement to ensure citizens comply with this policy rather than mandate enforcement by private businesses.

It also can be difficult for employees to wear a mask for an eight-hour shift. In those instances, an employee may need to temporarily pull down their facial covering so a customer can hear them or to get a breath of fresh air. We would request some leeway and understanding of these circumstances rather than automatically imposing a Class 2 misdemeanor.

Regarding uniformity, we are already seeing a patchwork of local orders. As we have encountered with previous requirements, lack of uniformity across the state leads to a lack of clarity and, therefore, a lack of compliance. Various local orders, interpretations, and enforcement creates uncertainty amongst businesses and employees and increases time and expense spent on compliance rather than carrying out the essential functions of the business. It creates inherent unfairness where one business may be subject to certain requirements or enforcement in one area of the state or even county, while a competitor in another area is not. This also can have the unintended consequence of sending people to other localities to obtain goods or services rather than staying close to home.

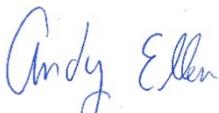
As we have noted in previous communications, compliance with numerous local orders is further complicated by the fact that localities do not properly or consistently report the information through the state EOC, nor does webEOC have a reliable, uniform tracking mechanism. In turn, this sends us to internet searches and word-of-mouth resulting in a disjointed compliance approach.

For these reasons, we ask for uniformity across the state for any requirements imposed and that thoughtful considerations be given toward exceptions for when social distancing can be maintained and other exceptions around health, religion, or disabilities. Durham is an example of such measures where these exceptions were recognized and where they have not made private businesses operate as the enforcement arm.

We greatly appreciate your due consideration of these requests to provide uniform guidance for businesses across the state with law enforcement continuing in their enforcement duties for these executive orders.

We are extraordinarily grateful for your continued support for these workers and the critical services they are offering to respond to the COVID-19 pandemic.

Sincerely,



Andy Ellen
President and General Counsel
NC Retail Merchants Association