

David Krinsky
Rockville, MD 20853

4 August 2021

Re: Proposed Regulation to Reinstitute Indoor Masking Requirements

Dear Members of the Council:

I am a resident of Montgomery County and a lawyer with expertise in administrative law as well as the interaction between science and legal decisionmaking. I write in opposition to the Proposed Regulation to Reinstitute Indoor Masking Requirements.

The CDC Guidance recommending mask-wearing above a prevalence threshold of 50 cases per 100,000 population per week was never intended to have the force of law. The CDC did not even purport to perform the type of cost-benefit analysis that laws and regulations typically go through. That is not a criticism of the CDC; it was giving advice. The CDC made a one-size-fits-all *recommendation* for a nation in crisis.

Montgomery County is not a county in crisis. We have one of the highest vaccination rates in the U.S., with over 90% of eligible residents ages 12+ having had at least one shot. There is no sign that our hospitals are under threat. There is no reason to believe that we need this to be a law. And there is no logic at all to our making it a law when so many other health-conscious, highly vaccinated jurisdictions, from Northern Virginia to New York City to Boston, are not.

And there are strong reasons not to make the guidance a law. The benefits of any mandate are speculative at best. While vaccinated people can transmit SARS-CoV-2, they do so at lower levels than unvaccinated ones. The vast majority of county residents—especially our most at-risk—are vaccinated. And mask-wearing is widespread here anyway. We simply do not have a basis to think that a countywide mask mandate will save even one life or prevent even one serious medical outcome.

Weighed against any such benefits are costs that were not within the CDC's purview to consider, but are real. Even though wearing a mask seems like a simple thing, I know of at least one county yoga studio that will not be hiring as many teachers if the mandate is imposed because fewer people will want to take classes in masks. Neighboring jurisdictions without mask requirements will see diners go to their restaurants instead of to our county's, and shoppers go to their stores instead of ours. And a renewed mask mandate will do nothing to encourage—and likely will discourage—vaccination by the remaining holdouts in our county.

I applaud the Council for its care for the health of county residents, but in simple terms, this mandate is not well conceived as a law nor is it necessary. I urge the council to vote against it, and instead to strongly recommend that residents wear masks.

In the event the Council nevertheless enacts a renewed mask mandate, the proposal as worded has two important technical problems that the Council should fix. One, it should be clearer that the mandate lasts only as long as cases remain above the threshold. Two, it should have a sunset date in early 2022 at the latest. We do not know what the prevalence of COVID-19 will be in covid-and-flu seasons to come, and a measure passed to stave off fears of the delta variant should not require mask-wearing every winter in the future—which this one, by its terms, might do—without further and separate consideration.

Thank you for your attention and your work on behalf of the citizens of this county.

Sincerely yours,

/s/ David Krinsky

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