

Clerk's Note: This Resolution No. 19-842 was originally published with legislative changes marked. This is a clean copy to reflect the resolution as adopted by the Council.

CORRECTED

Resolution No.: 19-842
Introduced: May 18, 2021
Adopted: May 18, 2021

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE MONTGOMERY COUNTY BOARD OF HEALTH**

Lead Sponsors: Council President Hucker and Council Vice President Alborno

SUBJECT: Sixth Amended Board of Health Regulation to prevent the spread of COVID-19 in the County

Background

1. Lawrence J. Hogan, the Governor of the State of Maryland declared a state of emergency and catastrophic health emergency on March 5, 2020, and renewed on March 17, 2020, April 10, 2020, May 6, 2020, June 3, 2020, July 1, 2020, July 31, 2020, August 10, 2020, September 8, 2020, October 6, 2020, October 29, 2020, November 25, 2020, December 23, 2020, January 21, 2021, February 19, 2021, March 18, 2021, April 16, 2021 and on May 14, 2021 to control and prevent the spread of SARS-CoV-2 also known as COVID-19 within the state and both the state of emergency and catastrophic health emergency still exist in Maryland.
2. The effects of COVID-19 require that local officials be vigilant in advising all individuals in Montgomery County, Maryland of measures they can take to protect health, safety, and welfare.
3. There are multiple COVID-19 variants with the private primary variants being the United Kingdom variant (known as B.1.1.7) which may be associated with an increased risk of death, the South Africa variant (known as B.1.351), the Brazil variant (known as P.1), and the Indian variant (known as B.1.617).
4. The potential consequences of emerging variants include the ability to: spread more quickly in people; cause milder or more severe disease in people; evade detection by specific diagnostic tests; decreased susceptibility to therapeutic agents such as monoclonal antibodies; and further delay or possibly evade natural or vaccine induced immunity.
5. Montgomery County has confirmed cases of all three primary variants.

6. It is imperative to control the community spread of COVID-19 to avoid further mutations which give rise to new variants until such time as a sufficient portion of the population of Montgomery County is inoculated against COVID-19.
7. To date more than 60% of the population of Montgomery County has received at least one dose of the vaccination against COVID-19.
8. COVID-19 in Montgomery County has caused disease in Montgomery County, which thus far has claimed the lives of 1490 Montgomery County residents.
9. The currently known and available scientific evidence and best practices support continued limitations on large gatherings, increased use of face coverings, and continued social distancing to prevent exposures and transmissions and further mutations.
10. To reduce the threat to human health caused by transmission of COVID-19 and to protect and save lives, it is necessary and reasonable that individuals in Montgomery County continue to engage in social distancing, use of face coverings, and refrain from congregating in large groups.
11. It continues to be necessary to control and direct the occupancy and use of buildings and premises, as well as places of amusement and assembly within Montgomery County.
12. Due to Montgomery County's large population and the amount of interstate travel between the District of Columbia and the Commonwealth of Virginia, disease can spread faster.
13. On March 9, Director of the National Institute of Allergy & Infectious Diseases at the NIH and Chief Medical Advisor for COVID-19 to President Biden, Dr. Anthony Fauci, told the Montgomery County Council "Now is the time to keep our foot on the accelerator with regard to adherence to public health measures, such as masking, physical distancing, and other measures that we know work to protect people from the SARS CoV-2 virus, while we are ramping up efforts to vaccinate as many people as we can as quickly as possible."
14. On March 1, Centers for Disease Control and Prevention ("CDC") Director Rochelle Walensky said, "Please hear me clearly. At this level of cases with variants spreading, we stand to completely lose the hard-earned ground we have gained. These variants are a very real threat to our people and to our progress. Now is not the time to relax the critical safeguards that we know could stop the spread of COVID-19 in our communities, not when we are so close."
15. Both County Health Officer, Dr. Travis Gayles, and County Director of Emergency Management, Dr. Earl Stoddard, recommended a progressive, staged relaxation of restrictions so officials can disaggregate the data and assess the impact of the relaxation of the restrictions in other jurisdictions before deciding what is safest for the residents of Montgomery County.

16. Pursuant to Md. Code Ann. Local Government §10-328(b) a county may provide for the prevention of contagious diseases in the County.
17. A local Board of Health may, pursuant to Md. Code Ann. Health Gen. §3-202(d), adopt and enforce rules and regulations on any cause of disease in the County.
18. Pursuant to Montgomery County Code 2-65, the County Council is and may act as the County Board of Health.
19. The Council, sitting as the Board of Health, adopted a Board of Health Regulation in Resolution No. 19-760 on March 12, 2021. The Council adopted the First Amended Regulation on March 19, 2021 in Resolution No. 19-768. The Council adopted the Second Amended Regulation on March 26, 2021 in Resolution No. 19-778. The Council Adopted the Third Amended Board of Health Regulation on April 13, 2021 in Resolution No. 19-790. The Council Adopted the Fourth Amended Board of Health Regulation on April 20, 2021 in Resolution No. 19-794. The Council Adopted the Fifth Amended Board of Health Regulation in Resolution No. 19-814. This Board of Health Regulation would amend Resolution No. 19-814.
20. Rule 4(d) of the Council's Rules of Procedure provide that before the Board of Health adopts a regulation, the Council President must advertise a public hearing in a newspaper circulated throughout the County at least 15 days before the hearing and notify the governing body or chief executive officer of each municipality in the County at least 15 days before the hearing. Rule 4(d) allows the President to waive these notice provisions if a public health emergency requires immediate action. The Council President has waived these notice requirements because of the public health emergency caused by COVID-19.
21. The County Council, sitting as the Board of Health, finds after hearing the testimony and other evidence in the record of the public hearing that this public health regulation is necessary to protect the health of County residents.

Action

The County Council for Montgomery County, Maryland, sitting as the County Board of Health, finds that this is an emergency and approves the following regulation amending the regulation adopted by Resolution No. 19-814:

1 **1. Definitions.**

- 2 a. “*Community Transmission Metrics*” means daily case rates, COVID-19 test
3 positivity numbers, and case rates per 100,000 in the preceding 14-day period.
- 4 b. “*Convention and Banquet Facilities*” means convention facilities, conference
5 facilities, banquet and catering facilities, community halls, and Social Clubs,
6 including without limitation, hotel ballrooms.
- 7 c. “*Face Covering*” means a covering that fully covers a person’s nose, mouth, and
8 chin and is secured to the person’s head, including cloth face coverings, scarves,
9 and bandanas. It does not include face covering with a valve; or solely wearing a
10 face shield.
- 11 d. “*Fitness Centers*” means a fitness center, dance studios, health clubs, health spas,
12 gyms, training facilities, ice rinks.
- 13 e. “*Foodservice Establishment*” means a restaurant, bars, or other similar
14 establishments that sell food or beverages for consumption on-premises in
15 Montgomery County and social and fraternal clubs with dining facilities.
- 16 f. “*Fully vaccinated*” means two weeks have passed since a person received the last
17 required dose of an approved COVID-19 vaccine.
- 18 g. “*Graduation*” means any ceremony conferring degrees or diplomas, such as at a
19 college or school.
- 20 h. “*Maximum Occupancy*” means the maximum occupancy load of a facility under
21 the applicable fire code or pursuant to applicable laws, regulations, and permits. If
22 a facility is not rated for maximum occupancy, a person per square foot option must
23 be used to calculate maximum occupancy.
- 24 i. “*Outdoor Graduation*” means a graduation held in an Outdoor Venue.
- 25 j. “*Outdoor Venue*” means any outdoor venue in the County at which:
26 (i) live performances occur, motion pictures are shown, or sporting events
27 occur (including, without limitation, major league, professional, minor
28 league, semiprofessional, amateur, recreational, motor sports, and collegiate
29 sporting events); and
30 (ii) entry is limited to ticketed customers.
- 31 “*Outdoor Venue*” does not include golf courses and driving ranges, outdoor archery
32 and shooting ranges, marinas and watercraft rental businesses, campgrounds, horse

33 boarding and riding facilities, drive-in movie theaters, outdoor swimming pools,
34 outdoor day camps, amusement parks, tour boats, miniature golf establishments,
35 and go-kart tracks.

36 k. *“Personal Service Establishments”* means hair salons, barbershops, and
37 establishments that provide tanning, tattoo, waxing, threading, electrolysis,
38 cryotherapy, facial and other skin services, massage, and nail technician services.

39 l. *“Population”* means the number of individuals, regardless of age, who reside in
40 Montgomery County, Maryland as determined by the U.S. Census Bureau.

41 m. *“Public Transportation”* means shared-ride surface transportation services that are
42 open to the general public, including without limitation, taxi services, ride-sharing
43 services, car services, and transit services operating within Montgomery County.
44 Examples of Public Transportation include, but are not limited, to Ride-On bus
45 service, WMATA bus and train service, MARC train service, and Mobility and
46 Paratransit services.

47 n. *“Religious Facilities”* means Churches, synagogues, mosques, temples, and other
48 similar religious facilities of any faith.

49 o. *“School”* means a public or private elementary or secondary school.

50 p. *“School Bus”* means a conveyance used to transport students to or from a School.

51 q. *“Social gatherings”* means a gathering of persons from more than one household.
52 It includes parties, receptions, parades, festivals, fundraisers, community,
53 recreational, leisure, and non-professional sports gatherings and events and all
54 events held in Convention and Banquet Facilities.

55 **2. Face Coverings.**

56 a. *Requirement to Wear Face Coverings.*

57 i. All persons in the County must wear face coverings when they are:

- 58 1. in or on any Public Transportation or School Bus;
- 59 2. obtaining health care services, including without limitation in
60 offices of physicians and dentists, hospitals, pharmacies, and
61 laboratories; and
- 62 3. indoors in any portion of a School where interaction with others is
63 likely, including without limitation, classrooms, hallways,
64 cafeterias, auditoriums, and gymnasiums.

- 65 ii. All persons who are not fully vaccinated must also wear face coverings
66 when indoors;
- 67 1. in an area where members of the public are generally permitted; and
68 2. in an indoor work area where interaction with others is likely or
69 where food is prepared;
- 70 iii. Face coverings are not required outdoors, but persons who are not fully
71 vaccinated are strongly encouraged to wear face coverings outdoors.
- 72 b. *Exceptions.* Paragraph 2.a. does not require persons to wear Face Coverings:
73 i. Pursuant to State Executive Order 21-05-14-01 paragraph III.b.

74 **3. General Operating Requirements.**

- 75 a. Unless expressly stated to the contrary, all businesses, organizations,
76 establishments, and facilities that are permitted to operate under this Order must:
- 77 i. require strict adherence to social distancing pursuant to CDC or MDH
78 guidance, whichever is stricter;
- 79 ii. utilize markings and signage to guide employees and customers;
- 80 iii. provide employees with guidance and training to reflect updated CDC
81 guidance for their workplace;
- 82 iv. use CDC and Environmental Protection Agency (“EPA”) approved
83 disinfectants to clean spaces daily; and
- 84 v. require employees to wash their hands hourly.
- 85 b. All businesses, organizations, establishments, and facilities that are permitted to
86 open shall post signage indicating that they are in compliance with all provisions
87 of paragraph 3.a of this Order.

88 **4. Letters of Approval.**

- 89 a. Requests for a Letter of Approval must be submitted a minimum of 5 business days
90 before the scheduled event. Failure to submit a timely request will result in an
91 automatic denial of the Letter of Approval.
- 92 b. Failure to obtain a Letter of Approval prior to proceeding with an event will be
93 considered to be a violation of this Order and could subject the requestor, organizer,
94 and venue to the appropriate fines and sanctions.

- 95 c. Any person, organizer, or venue who is found to have held an event without a Letter
96 of Approval will be automatically disqualified from receiving a future Letter of
97 Approval.

98 **5. Gatherings.**

- 99 a. Unless expressly stated in another paragraph of this Order:
- 100 i. Outdoor gatherings are no longer subject to gathering restrictions.
- 101 ii. Indoor gatherings of more than 250 people are prohibited.
- 102 iii. The size of the location and venue of any gathering must accommodate
103 applicable social distancing for the number of attendees.
- 104 iv. If more than one household is present at a gathering each individual present
105 at the gathering must be counted for purposes of determining compliance.

106 **6. Businesses that May Open.**

- 107 a. *Foodservice Establishments.*
- 108 i. Total number of persons permitted in the indoor dining portion of the
109 foodservice establishment shall not exceed 75% of the maximum
110 occupancy.
- 111 ii. Outdoor dining at a foodservice establishment must follow [MDH Order No](#)
112 [2021-03-09-01](#) paragraph 2.A.
- 113 iii. May resume buffet service pursuant to [MDH Order No 2021-03-09-01](#).
- 114 iv. Must require all customers to wear Face Coverings unless actively engaged
115 in the act of eating or drinking (e.g. while seated at the table and talking but
116 not eating or drinking) as required in paragraph 2.
- 117 v. Must post signage at each outdoor dining entrance advising customers and
118 visitors that:
- 119 1. they must comply with the Face Covering requirements at all times
120 when they are not actively eating or drinking;
- 121 2. they must maintain social distancing of at least 6 feet when waiting
122 to be seated; and
- 123 3. failure to wear Face Coverings when required by paragraph 2 or
124 maintain social distancing may result in their being refused service
125 and found to be in violation of this order.
- 126 b. *Cigar Bars/Hookah Bars/Vape Shops.* May permit smoking outdoors.

- 127 c. *Malls.*
- 128 i. May fully reopen pedestrian concourses.
- 129 ii. Food courts located inside indoor malls shall follow paragraph 6.a.
- 130 iii. Congregating in any indoor area outside of retail stores is prohibited.
- 131 iv. Malls may return tables, chairs, benches, or any other items to indoor areas
- 132 outside of retail stores.
- 133 d. *Religious Facilities.*
- 134 i. The total number of persons permitted in a religious facility may not exceed
- 135 75% of the facility's maximum occupancy.
- 136 ii. Occupancy numbers shall include faith leaders, volunteers, and
- 137 congregants.
- 138 iii. Must follow spacing, screening, cleaning, and music guidelines as stated in
- 139 the County's [Religious Facilities Reopening](#) page.
- 140 e. *Sports.*
- 141 i. All organized sports played in the County must comply with the gathering
- 142 guidelines described in paragraph 5 and all persons must comply with the
- 143 face covering requirements in paragraph 2.
- 144 ii. Sports played outside of an organized league must follow social gathering
- 145 guidelines in paragraph 5 and all persons must comply with the face
- 146 covering requirements in paragraph 2.
- 147 iii. Play and games with teams from outside of Maryland, Virginia, or the
- 148 District of Columbia is permitted.
- 149 iv. The Health Officer or the Officer's designee may approve a sports event
- 150 that includes more than 250 people indoors if the Officer finds that the Plan
- 151 provides for reasonable safety for all participants.

152 **7. Businesses that may open at 75% Maximum Occupancy.**

- 153 a. *Fitness Centers.*
- 154 i. Fitness Centers must follow the gathering limits in paragraph 5 and the face
- 155 covering requirements in paragraph 2.
- 156 b. *Bowling Alleys.*

- 157 i. all equipment (balls, shoes, etc.) and spaces (lanes, tables, seats) must be
158 cleaned between each person(s) or group's use with CDC and EPA
159 approved cleaners; and
- 160 ii. any foodservice establishment located within the bowling alley must follow
161 paragraph 6 of this Order.
- 162 c. *Escape Rooms.*
- 163 i. Before and after each game, all items in game rooms and items provided to
164 patrons (including but not limited to lock, props, and any touchable
165 surfaces) must be thoroughly cleaned using CDC and EPA approved
166 disinfectants.
- 167 d. *Museums and Art Galleries.*
- 168 i. Exhibits requiring contact (for example "please touch" exhibits or other
169 interactive displays) may open.
- 170 e. *Personal Services.*
- 171 i. Staff are required to wear gloves, and any other Personal Protective
172 Equipment as appropriate to their workplace and provided service.
- 173 f. *Pools.*
- 174 i. Must strictly comply with any guidance issued by DHHS.
- 175 g. *Retail Establishments.*
- 176 i. Employees must use any additional Personal Protective Equipment as
177 appropriate to their workplace.
- 178 h. *Recreation Centers.*
- 179 **8. Other Businesses, Organizations, Establishments, and Facilities that may open at**
180 **75% capacity.**
- 181 a. *Amusement parks.* Including stand-alone types, such as, but not limited to merry-
182 go-rounds and roller coasters.
- 183 b. *Bingo halls.*
- 184 c. *Go-kart tracks.*
- 185 d. *Roller skating rinks.*
- 186 e. *Social Clubs.*

- 187 f. *Theaters*. This Order controls the occupancy and use of theatres in Montgomery
188 County at which live performances occur or motion pictures are shown
189 (“Theaters”).
- 190 g. *Trampoline Parks*.
- 191 h. Any other establishment not listed above that is subject to the admission and
192 amusement tax under Title 4 of the Tax-General Article of the Maryland Code.

193 **9. Camps.**

- 194 a. *General Requirements*.
- 195 i. Campers from outside of Maryland, Virginia, and District of Columbia are
196 permitted to attend youth camps in Montgomery County.
- 197 ii. Camps must follow MDH and COMAR requirements.

198 **10. Graduations.** May occur if the following requirements are met:

- 199 a. *Generally*.
- 200 i. Persons/groups of guests not of the same household must maintain a
201 minimum of 6 feet of social distance at all times, including during any
202 graduate procession.
- 203 ii. All persons present must wear face coverings consistent with paragraph 2
204 of this Regulation.
- 205 iii. All persons present must be included in the numerical attendance totals.
206 This includes students, faculty, staff, workers, vendors, guests, and
207 speakers.
- 208 iv. Any person with a fever or who is exhibiting symptoms of COVID-19, must
209 not attend a graduation ceremony.
- 210 v. A record of all individuals who attended the graduation must be maintained
211 for at least 30 days to assist with contact tracing. Information collected must
212 include name, date, phone number and email (if available). This
213 information must be provided within 24 hours if requested by MCDHHS if
214 a case of COVID-19 associated with the graduation occurs. Seating charts
215 must also be provided if used.
- 216 vi. The school must post the following signage:

- 217 1. At any entrance(s) stating that nobody with a fever or symptoms of
218 COVID-19 is permitted to enter the venue and that individuals must
219 wear a mask or face covering.
- 220 2. Throughout the venue reinforcing social distancing, face covering
221 usage, and hand hygiene policies.
- 222 3. At areas of entry and egress to allow the one-way flow of attendees.
- 223 4. On floors and sidewalks both inside and outside the venue to provide
224 physical guides to ensure individuals remain at least 6 feet apart in
225 queuing areas.
- 226 5. Marking seating arrangements to delineate physically distanced
227 seating.
- 228 vii. Must prohibit congregating or gathering in common areas both inside and
229 outside of the venue before or after the graduation ceremony.
- 230 viii. Prohibit group or staged photography.
- 231 b. *Ceremony.*
- 232 i. Ceremonies must not exceed 2 hours, but the venue may be open for an hour
233 in advance and after the ceremony to prevent crowding at points of ingress
234 and egress.
- 235 ii. No more than 10 persons must be permitted on the stage at any given time.
236 Persons on the stage must be spaced at least 6 feet apart.
- 237 iii. Only single performers/speakers must be allowed (e.g., no choirs or bands)
238 during the ceremony.
- 239 1. A minimum of 12 feet must be maintained from the audience if
240 performers/speakers are masked.
- 241 2. A minimum of 18 feet must be maintained from the audience if
242 performers/speakers are unmasked.
- 243 3. Use of shared objects during the graduation should be minimized
244 (e.g. microphones).
- 245 4. Diplomas must be distributed with no handshake or physical
246 contact.
- 247 5. No food or beverage service is permitted during ceremonies
248 (including concession stands).

- 249 6. If permitted by the venue, guests may bring their own
250 beverages/snacks which may only be consumed while seated.
- 251 7. All guests must be seated and remain in their seats throughout the
252 ceremony.
- 253 8. Any items handed out to guests must be single use or cleaned and
254 disinfected between each guest use (e.g., assisted audio devices).
- 255 c. *Communication and Response.* Schools must develop a comprehensive plan to
256 communicate measures in place to prevent the spread of COVID-19 with all
257 attendees of the graduation. The plan must:
- 258 i. Identify and address potential language, cultural, and disability barriers in
259 the communication plan.
- 260 ii. Communicate COVID-19 policies to staff (including vendors), guests and
261 students, (e.g., on school/graduation website, social media sites, prominent
262 signage at entrances and throughout the venue, message screens and public
263 announcements before and during the graduation).
- 264 iii. If an attendee becomes sick while at the graduation ceremony, the school
265 must have a protocol in place for that individual to immediately leave the
266 venue. If they are unable to immediately leave (e.g., they need to wait for
267 a ride), there should be a process that allows them to isolate until they are
268 able to leave. People who are sick should go home or to a healthcare
269 facility, depending on the severity of their symptoms. Public transportation
270 should not be used.
- 271 iv. Must identify a point of contact that staff or an attendee can notify if they
272 test positive for COVID-19 within the 2 weeks from the date of the
273 graduation and choose to disclose this information.
- 274 v. In the event of a positive test result, the COVID-19 Point of Contact must
275 notify the Montgomery County Department of Health and Human Services
276 (240-777-1755) within one business day of the notice and provide them
277 with the name and contact information of the positive case.
- 278 vi. Put systems in place to encourage self-reporting.
- 279 d. *Indoor Graduations.*

- 280 i. Total number of persons permitted at an indoor graduation is limited to 250
281 people.
- 282 ii. Must obtain a Letter of Approval prior to the graduation by submitting a
283 COVID-19 Graduation Plan which explains how all of the requirements in
284 paragraphs 10(a) – (c) will be implemented. Any requests for increased
285 occupancy should be made at this time.
- 286 e. *Outdoor Graduations.*
- 287 i. Total number of persons permitted at an outdoor graduation at any one time
288 must not exceed the Outdoor Venue’s Maximum Occupancy. If an Outdoor
289 Venue does not have a formal Certificate of Occupancy, 40 square feet per
290 person must be used to calculate the occupancy limit.
- 291 ii. Schools planning outdoor graduations should put careful thought and
292 planning into a back-up plan in case of inclement weather. Back-up venues
293 must meet all the requirements outlined in this guidance.
- 294 f. *Recommendations.* Although not required, the following are strongly
295 recommended:
- 296 i. Holding multiple smaller graduation ceremonies as necessary, so that all
297 graduating students can be accommodated while minimizing crowd sizes.
- 298 ii. Holding a virtual graduation or providing a virtual option for persons who
299 either do not wish to or are unable to attend.
- 300 iii. Use of pre-assigned/reserved seating is recommended.
- 301 iv. Attendance by persons traveling from outside of Maryland, Virginia, and
302 the District of Columbia is strongly discouraged.

303 **11. Termination of this Order**

- 304 a. Effective May 28, 2021 at 6:00 a.m. this order will be rescinded and have no further
305 effect at which point all conduct and business in Montgomery County must follow
306 any State or MDH requirements that are in place at that time.
- 307 b. If, after a review of the Community Transmission Metrics, the Health Officer
308 determines that the continued automatic relaxation of restrictions is contrary to the
309 public health and could lead to the continued spread of COVID-19 or any associated
310 variant, the Health Officer, or the Health Officer’s designee, must notify the Board

311 of Health of those concerns, and any continued relaxation of restrictions must be
312 suspended pending a hearing before the Board of Health.

313 **12. Enforcement.** This Order must be enforced by any County department or agency that has
314 authority over the subject matter of any particular provision and the Montgomery County
315 Police Department.

316 **13. Applicability.** This regulation applies Countywide.

317 **14. Severability.** If the application of this regulation or any part of it to any facts or
318 circumstances is held invalid, the rest of the regulation and its application to all other facts
319 and circumstances is intended to remain in effect.

320 **15. Effective Date.** This regulation takes effect on May 18, 2021 at 5 p.m.

This is a correct copy of Council action.



Selena Mendy Singleton, Esq.,
Clerk of the Council