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 Albornoz

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

Background


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.


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. Definitions.

a. “Community Transmission Metrics” means daily case rates, COVID-19 test positivity numbers, and case rates per 100,000 in the preceding 14-day period.

b. “Convention and Banquet Facilities” means convention facilities, conference facilities, banquet and catering facilities, community halls, and Social Clubs, including without limitation, hotel ballrooms.

c. “Face Covering” means a covering that fully covers a person’s nose, mouth, and chin and is secured to the person’s head, including cloth face coverings, scarves, and bandanas. It does not include face covering with a valve; or solely wearing a face shield.

d. “Fitness Centers” means a fitness center, dance studios, health clubs, health spas, gyms, training facilities, ice rinks.

e. “Foodservice Establishment” means a restaurant, bars, or other similar establishments that sell food or beverages for consumption on-premises in Montgomery County and social and fraternal clubs with dining facilities.

f. “Fully vaccinated” means two weeks have passed since a person received the last required dose of an approved COVID-19 vaccine.

g. “Graduation” means any ceremony conferring degrees or diplomas, such as at a college or school.

h. “Maximum Occupancy” means the maximum occupancy load of a facility under the applicable fire code or pursuant to applicable laws, regulations, and permits. If a facility is not rated for maximum occupancy, a person per square foot option must be used to calculate maximum occupancy.

i. “Outdoor Graduation” means a graduation held in an Outdoor Venue.

j. “Outdoor Venue” means any outdoor venue in the County at which:

(i) live performances occur, motion pictures are shown, or sporting events occur (including, without limitation, major league, professional, minor league, semiprofessional, amateur, recreational, motor sports, and collegiate sporting events); and

(ii) entry is limited to ticketed customers.

“Outdoor Venue” does not include golf courses and driving ranges, outdoor archery and shooting ranges, marinas and watercraft rental businesses, campgrounds, horse
boarding and riding facilities, drive-in movie theaters, outdoor swimming pools,
outdoor day camps, amusement parks, tour boats, miniature golf establishments,
and go-kart tracks.

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

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

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

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

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

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

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

2. Face Coverings.

a. Requirement to Wear Face Coverings.

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

1. in or on any Public Transportation or School Bus;

2. obtaining health care services, including without limitation in
offices of physicians and dentists, hospitals, pharmacies, and
laboratories; and

3. indoors in any portion of a School where interaction with others is
likely, including without limitation, classrooms, hallways,
cafeterias, auditoriums, and gymnasiums.
ii. All persons who are not fully vaccinated must also wear face coverings when indoors;
   1. in an area where members of the public are generally permitted; and
   2. in an indoor work area where interaction with others is likely or where food is prepared;
iii. Face coverings are not required outdoors, but persons who are not fully vaccinated are strongly encouraged to wear face coverings outdoors.

b. *Exceptions.* Paragraph 2.a. does not require persons to wear Face Coverings:
   i. Pursuant to State Executive Order 21-05-14-01 paragraph III.b.

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

4. **Letters of Approval.**
   a. Requests for a Letter of Approval must be submitted a minimum of 5 business days before the scheduled event. Failure to submit a timely request will result in an automatic denial of the Letter of Approval.
   b. Failure to obtain a Letter of Approval prior to proceeding with an event will be considered to be a violation of this Order and could subject the requestor, organizer, and venue to the appropriate fines and sanctions.
c. Any person, organizer, or venue who is found to have held an event without a Letter of Approval will be automatically disqualified from receiving a future Letter of Approval.

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

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

i. May fully reopen pedestrian concourses.

ii. Food courts located inside indoor malls shall follow paragraph 6.a.

iii. Congregating in any indoor area outside of retail stores is prohibited.

iv. Malls may return tables, chairs, benches, or any other items to indoor areas outside of retail stores.

d. **Religious Facilities.**

i. The total number of persons permitted in a religious facility may not exceed 75% of the facility’s maximum occupancy.

ii. Occupancy numbers shall include faith leaders, volunteers, and congregants.

iii. Must follow spacing, screening, cleaning, and music guidelines as stated in the County’s Religious Facilities Reopening page.

e. **Sports.**

i. All organized sports played in the County must comply with the gathering guidelines described in paragraph 5 and all persons must comply with the face covering requirements in paragraph 2.

ii. Sports played outside of an organized league must follow social gathering guidelines in paragraph 5 and all persons must comply with the face covering requirements in paragraph 2.

iii. Play and games with teams from outside of Maryland, Virginia, or the District of Columbia is permitted.

iv. The Health Officer or the Officer’s designee may approve a sports event that includes more than 250 people indoors if the Officer finds that the Plan provides for reasonable safety for all participants.

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

a. **Fitness Centers.**

i. Fitness Centers must follow the gathering limits in paragraph 5 and the face covering requirements in paragraph 2.

b. **Bowling Alleys.**
i. all equipment (balls, shoes, etc.) and spaces (lanes, tables, seats) must be cleaned between each person(s) or group’s use with CDC and EPA approved cleaners; and

ii. any foodservice establishment located within the bowling alley must follow paragraph 6 of this Order.

c. *Escape Rooms.*

i. Before and after each game, all items in game rooms and items provided to patrons (including but not limited to lock, props, and any touchable surfaces) must be thoroughly cleaned using CDC and EPA approved disinfectants.

d. *Museums and Art Galleries.*

i. Exhibits requiring contact (for example “please touch” exhibits or other interactive displays) may open.

e. *Personal Services.*

i. Staff are required to wear gloves, and any other Personal Protective Equipment as appropriate to their workplace and provided service.

f. *Pools.*

i. Must strictly comply with any guidance issued by DHHS.

g. *Retail Establishments.*

i. Employees must use any additional Personal Protective Equipment as appropriate to their workplace.

h. *Recreation Centers.*

8. **Other Businesses, Organizations, Establishments, and Facilities that may open at 75% capacity.**

a. *Amusement parks.* Including stand-alone types, such as, but not limited to merry-go-rounds and roller coasters.

b. *Bingo halls.*

c. *Go-kart tracks.*

d. *Roller skating rinks.*

e. *Social Clubs.*
f. **Theaters.** This Order controls the occupancy and use of theatres in Montgomery County at which live performances occur or motion pictures are shown ("Theaters").

g. **Trampoline Parks.**

h. Any other establishment not listed above that is subject to the admission and amusement tax under Title 4 of the Tax-General Article of the Maryland Code.

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

10. **Graduations.** May occur if the following requirements are met:
   a. **Generally.**
      i. Persons/groups of guests not of the same household must maintain a minimum of 6 feet of social distance at all times, including during any graduate procession.
      ii. All persons present must wear face coverings consistent with paragraph 2 of this Regulation.
      iii. All persons present must be included in the numerical attendance totals. This includes students, faculty, staff, workers, vendors, guests, and speakers.
      iv. Any person with a fever or who is exhibiting symptoms of COVID-19, must not attend a graduation ceremony.
      v. A record of all individuals who attended the graduation must be maintained for at least 30 days to assist with contact tracing. Information collected must include name, date, phone number and email (if available). This information must be provided within 24 hours if requested by MCDHHS if a case of COVID-19 associated with the graduation occurs. Seating charts must also be provided if used.
      vi. The school must post the following signage:
1. At any entrance(s) stating that nobody with a fever or symptoms of COVID-19 is permitted to enter the venue and that individuals must wear a mask or face covering.

2. Throughout the venue reinforcing social distancing, face covering usage, and hand hygiene policies.

3. At areas of entry and egress to allow the one-way flow of attendees.

4. On floors and sidewalks both inside and outside the venue to provide physical guides to ensure individuals remain at least 6 feet apart in queuing areas.

5. Marking seating arrangements to delineate physically distanced seating.

vii. Must prohibit congregating or gathering in common areas both inside and outside of the venue before or after the graduation ceremony.

viii. Prohibit group or staged photography.

b. Ceremony.

i. Ceremonies must not exceed 2 hours, but the venue may be open for an hour in advance and after the ceremony to prevent crowding at points of ingress and egress.

ii. No more than 10 persons must be permitted on the stage at any given time. Persons on the stage must be spaced at least 6 feet apart.

iii. Only single performers/speakers must be allowed (e.g., no choirs or bands) during the ceremony.

1. A minimum of 12 feet must be maintained from the audience if performers/speakers are masked.

2. A minimum of 18 feet must be maintained from the audience if performers/speakers are unmasked.

3. Use of shared objects during the graduation should be minimized (e.g. microphones).

4. Diplomas must be distributed with no handshake or physical contact.

5. No food or beverage service is permitted during ceremonies (including concession stands).
6. If permitted by the venue, guests may bring their own beverages/snacks which may only be consumed while seated.

7. All guests must be seated and remain in their seats throughout the ceremony.

8. Any items handed out to guests must be single use or cleaned and disinfected between each guest use (e.g., assisted audio devices).

c. *Communication and Response.* Schools must develop a comprehensive plan to communicate measures in place to prevent the spread of COVID-19 with all attendees of the graduation. The plan must:

i. Identify and address potential language, cultural, and disability barriers in the communication plan.

ii. Communicate COVID-19 policies to staff (including vendors), guests and students, (e.g., on school/graduation website, social media sites, prominent signage at entrances and throughout the venue, message screens and public announcements before and during the graduation).

iii. If an attendee becomes sick while at the graduation ceremony, the school must have a protocol in place for that individual to immediately leave the venue. If they are unable to immediately leave (e.g., they need to wait for a ride), there should be a process that allows them to isolate until they are able to leave. People who are sick should go home or to a healthcare facility, depending on the severity of their symptoms. Public transportation should not be used.

iv. Must identify a point of contact that staff or an attendee can notify if they test positive for COVID-19 within the 2 weeks from the date of the graduation and choose to disclose this information.

v. In the event of a positive test result, the COVID-19 Point of Contact must notify the Montgomery County Department of Health and Human Services (240-777-1755) within one business day of the notice and provide them with the name and contact information of the positive case.

vi. Put systems in place to encourage self-reporting.

d. *Indoor Graduations.*
i. Total number of persons permitted at an indoor graduation is limited to 250 people.

ii. Must obtain a Letter of Approval prior to the graduation by submitting a COVID-19 Graduation Plan which explains how all of the requirements in paragraphs 10(a) – (c) will be implemented. Any requests for increased occupancy should be made at this time.

e. **Outdoor Graduations**.

i. Total number of persons permitted at an outdoor graduation at any one time must not exceed the Outdoor Venue’s Maximum Occupancy. If an Outdoor Venue does not have a formal Certificate of Occupancy, 40 square feet per person must be used to calculate the occupancy limit.

ii. Schools planning outdoor graduations should put careful thought and planning into a back-up plan in case of inclement weather. Back-up venues must meet all the requirements outlined in this guidance.

f. **Recommendations.** Although not required, the following are strongly recommended:

i. Holding multiple smaller graduation ceremonies as necessary, so that all graduating students can be accommodated while minimizing crowd sizes.

ii. Holding a virtual graduation or providing a virtual option for persons who either do not wish to or are unable to attend.

iii. Use of pre-assigned/reserved seating is recommended.

iv. Attendance by persons traveling from outside of Maryland, Virginia, and the District of Columbia is strongly discouraged.

11. **Termination of this Order**

a. Effective May 28, 2021 at 6:00 a.m. this order will be rescinded and have no further effect at which point all conduct and business in Montgomery County must follow any State or MDH requirements that are in place at that time.

b. If, after a review of the Community Transmission Metrics, the Health Officer determines that the continued automatic relaxation of restrictions is contrary to the public health and could lead to the continued spread of COVID-19 or any associated variant, the Health Officer, or the Health Officer’s designee, must notify the Board
of Health of those concerns, and any continued relaxation of restrictions must be suspended pending a hearing before the Board of Health.

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

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

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

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