

Clerk's Note: This Resolution No. 19-975 was originally published with a typo in paragraph 6 of the Background section. The typo has been corrected by changing the year "4021" to "2021".

Resolution No.:	<u>19-975</u>
Introduced:	<u>August 5, 2021</u>
Adopted:	<u>August 5, 2021</u>

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

Lead Sponsor: Council President at the Request of the County Executive

SUBJECT: 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, both of which were 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, May 16, 2021, June 12, 2021, and on July 12, 2021 to control and prevent the spread of SARS-CoV-2, a contagious disease, also known as COVID-19 within Maryland.
2. The effects of COVID-19 require that local officials remain vigilant in advising all individuals in Montgomery County, Maryland of measures they can take to protect their health, safety, and welfare.
3. There are multiple known and emerging COVID-19 variants, some of which spread more quickly in people; cause milder or more severe disease in people; evade detection by specific diagnostic tests; decrease susceptibility to therapeutic agents such as monoclonal antibodies; and further delay or possibly evade natural or vaccine induced immunity.
4. In Montgomery County the predominant COVID-19 variant is the highly contagious Delta variant.
5. On July 27, 2021 the CDC, citing new data on the Delta variant, recommended that persons residing in areas of substantial or high transmission of COVID-19 return to wearing masks indoors.
6. Montgomery County was an area of moderate transmission as of August 4, 2021, but pursuant to the CDC's forecasting was likely to cross the threshold into substantial transmission within the next few weeks.
7. 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 reinstate the mandatory use of face coverings indoors when the County is an area of substantial transmission of COVID-19.

8. The Montgomery County Executive, Marc Elrich, and the Montgomery County Health Officer, Dr. Travis Gayles, recommend that face coverings be required when Montgomery County's transmission status is substantial transmission.
9. According to clinical trials, the vaccine efficacy of the Pfizer-BioNTech Vaccine was 95.0% against symptomatic, laboratory-confirmed COVID-19 in people age 16 years and older without evidence of previous SARS-CoV-2 infection following receipt of 2 doses of Pfizer-BioNTech COVID-19 Vaccine. The vaccine efficacy of the Moderna Vaccine was 94.1% against symptomatic, laboratory-confirmed COVID-19 following receipt of 2 doses of Moderna COVID-19 Vaccine. The vaccine efficacy of the Janssen/Johnson & Johnson Vaccine was 66.3% at least 14 days after vaccination against symptomatic, laboratory-confirmed COVID-19 in persons without evidence of previous SARS-CoV-2 infection; 93.1% for the prevention of COVID-19-associated hospitalization; and 75% against all-cause death.
10. Vaccination against COVID-19 not only decreases the likelihood that a person will die or be hospitalized from COVID-19, but it also decreases the likelihood that an individual will spread COVID-19 to others. According to the CDC, a growing body of evidence indicates that vaccinated persons are less likely than unvaccinated persons to transmit SARS-CoV-2 to others.
11. The government of Montgomery County employs over 10,000 individuals, many of whom interact with and serve County residents on a daily basis. The public deserves to know that its government provides services to residents in the safest manner possible by ensuring that government employees are fully vaccinated against, or regularly tested for, COVID-19. In addition, County employees deserve to work in the safest possible work environment, where they are assured that their colleagues are fully vaccinated, or undergo regular testing, to prevent the spread of COVID-19.
12. Pursuant to Md. Code Ann. Local Government §10-328(b) a county may provide for the prevention of contagious diseases in the county.
13. 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.
14. Pursuant to Montgomery County Code 2-65, the Montgomery County Council is and may act as the County Board of Health.
15. 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.
16. 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:

- 1 **1. Definitions.**
- 2 a. *County employee* means an individual employed by the County, regardless
- 3 of the individual's merit system status or representation by an employee
- 4 organization.
- 5 b. *COVID-19 test* means a diagnostic test authorized by the Food and Drug
- 6 Administration to detect whether an Individual has a SARS-CoV-2
- 7 infection.
- 8 c. *Face covering* means a covering that fully covers a person's nose, mouth,
- 9 and chin and is secured to the person's head, including cloth face coverings,
- 10 scarves, and bandanas. It does not include face covering with a valve; or
- 11 solely wearing a face shield.
- 12 d. *Moderate transmission* means 10-49.99 total new cases per 100,000
- 13 persons in the past 7 days or 5-7.99% test positivity during the past 7 days.
- 14 e. *Public transportation* means shared-ride surface transportation services that
- 15 are open to the general public, including without limitation, taxi services,
- 16 ride-sharing services, car services, and transit services operating within
- 17 Montgomery County. Examples of *public transportation* include Ride-On
- 18 bus service, WMATA bus and train service, MARC train service, and
- 19 Mobility and Paratransit services.
- 20 f. *Substantial transmission* means 50-99.99 total new cases per 100,000
- 21 persons in the past 7 days or 8-9.99% test positivity during the past 7 days.
- 22 **2. Face Coverings.**
- 23 a. *Requirement to Wear Face Coverings.* Upon notice by the Health Officer
- 24 or his designee under paragraph 3. that the County has become an area of
- 25 substantial transmission, and without further action by the Board of Health:
- 26 i. All persons in the County over the age of two (2) years old must
- 27 wear face coverings indoors at any location accessible to the public.
- 28 b. *Exceptions.* Paragraph 2.a. does not require persons to wear face coverings:
- 29 i. if, due to a bona fide disability or medical condition, it would be
- 30 unsafe for the person to do so;
- 31 ii. to the extent wearing a face covering would impede communication
- 32 by or with persons who have a hearing impairment or other

- 33 disability, where the ability to see the mouth is essential for
34 communication;
- 35 iii. if wearing a face covering would subject the person to an unsafe
36 working condition, as determined by federal, state, or local
37 occupational safety regulators or workplace safety guidelines;
- 38 iv. to the extent wearing a face covering would make it impossible to
39 receive services requiring access to the face, mouth, or head,
40 including without limitation, dental care, shaving, and facial
41 treatments;
- 42 v. while consuming food or beverages;
- 43 vi. while swimming or engaging in other physical activities where the
44 use of a Face Covering is likely to pose a bona fide safety risk;
- 45 vii. while operating any public transportation conveyance, provided that
46 the person is:
- 47 (1) the sole operator of the conveyance, and
48 (2) located in a separate compartment that is off-limits to riders;
- 49 viii. to the extent it is necessary to observe the person's entire face to
50 verify such person's identity for bona fide security purposes;
- 51 ix. when a person is giving a speech or performing for broadcast or an
52 audience, if no one in a location accessible to the public is within six
53 feet of the speaker; or
- 54 x. pursuant to a Letter of Approval by the Health Officer or his
55 designee under paragraph 4 of this resolution.
- 56 c. The requirement to wear face coverings under subparagraph a. terminates,
57 without further action by the Board of Health, when the County returns to a
58 status of moderate transmission for 7 consecutive days.

59 **3. Notice.**

- 60 a. The Health Officer or his designee promptly must notify the County
61 Council Sitting as the Board of Health, and the County Executive, of any
62 change in the County's transmission status. At least once daily, the Health
63 Officer or his designee must update the County website with the County's
64 current community transmission status, including information on the total

65 new cases per 100,000 persons in the past 7 days and the test positivity
66 percentage during the past 7 days.

67 b. The Health Officer or his designee promptly must take reasonable steps to
68 notify the public if the County has become an area of substantial
69 transmission. The notification:

70 i. must include the date and time that the mask mandate under
71 paragraph 2.a. takes effect pursuant to this regulation;

72 ii. must be posted on the County website and distributed through a
73 press release; and

74 iii. must be sent, via email distribution list, to the governing body or
75 chief executive officer of each municipality in the County.

76 **4. Letters of Approval Consistent with CDC Guidance.**

77 a. If a person, organization, or venue is unclear about the application of this
78 regulation to their business, event, or activity, or seeks a modification to the
79 face covering requirement under paragraph 2.a. consistent with CDC
80 guidelines, they may seek a Letter of Approval from the Health Officer or
81 his designee.

82 b. Requests for a Letter of Approval must be submitted a minimum of 5
83 business days before a scheduled event or activity for which a Letter of
84 Approval is required. Failure to submit a timely request will result in an
85 automatic denial of the Letter of Approval.

86 c. Failure to obtain a required Letter of Approval prior to proceeding with an
87 event or activity will be considered to be a violation of this regulation and
88 could subject the requestor, organization, or venue to the appropriate fines
89 and sanctions.

90 d. Any person, organization, or venue that is found to have held an
91 unauthorized event or activity without a Letter of Approval will be
92 automatically disqualified from receiving a future Letter of Approval.

93 e. A Letter of Approval may be issued by the Health Officer or his designee
94 only to the extent that the conditions of approval in the Letter are consistent
95 with CDC guidelines in place at the time the Letter is issued.

96 **5. County employees – COVID-19 prevention requirements.**

- 97 a. On or before August 20, 2021, the County Executive must report to the
98 Board of Health regarding:
 - 99 i. an implementation plan and schedule to require each County
100 employee who reports to work at a County facility to:
 - 101 A. provide to the County, on a weekly basis, proof of a negative
102 COVID-19 test; or
 - 103 B. attest to the County that the employee is fully vaccinated
104 against COVID-19; and
 - 105 ii. a method by which aggregate data on County employee vaccination
106 and County employee COVID-19 testing will be made available to
107 the public.
- 108 b. On or before August 31, 2021, and weekly thereafter, the County Executive
109 must report to the Board of Health, and must make available to the public,
110 aggregate data on County employee vaccination and County employee
111 COVID-19 testing.
- 112 **6. Enforcement.** This Order must be enforced by any County department or agency
113 that has authority over the subject matter of any particular provision and the
114 Montgomery County Police Department.
- 115 **7. Applicability.** This regulation applies Countywide.
- 116 **8. Severability.** If the application of this regulation or any part of it to any facts or
117 circumstances is held invalid, the rest of the regulation and its application to all
118 other facts and circumstances is intended to remain in effect.
- 119 **9. Effective Date.** This regulation takes effect on August 7, 2021 at 12:00 a.m.

This is a correct copy of Council action.



Selena Mendy Singleton, Esq.,
Clerk of the Council