

Resolution No.: 19-1120
Introduced: January 4, 2022
Adopted: January 4, 2022

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

Lead Sponsor: County Council

SUBJECT: First Amended Board of Health Regulation to prevent the spread of COVID-19, and indoor mask guidance in Montgomery 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, to control and prevent the spread of SARS-CoV-2, a contagious disease, also known as COVID-19, within Maryland. The Governor's declaration expired on August 15, 2021.
2. On July 27, 2021 the U.S. Centers for Disease Control and Prevention (CDC), citing new data regarding the highly contagious Delta variant, recommended that persons residing in areas of substantial or high transmission of COVID-19 return to wearing masks in indoor public spaces.
3. Montgomery County is currently an area of high community transmission.
4. Under the Amended Board of Health Regulation adopted on November 2, 2021, through Resolution No. 19-1043, an indoor mask requirement for public spaces within the County will automatically terminate effective 12:01 a.m. on the calendar day immediately following the date that 85% or more of the County's total population is fully vaccinated, as reported by the CDC on its COVID Data Tracker.
5. Although the public health situation in the County has been aided tremendously by high vaccination rates among eligible County residents, and was aided further by the vaccination of newly eligible 5-to-11-year old children, a new variant of the virus, called Omicron, was discovered after the Board of Health adopted Resolution No. 19-1043 on November 2. Omicron has become the dominant variant of the COVID-19 virus throughout the United States, including Maryland. Omicron appears to be 6 times as transmissible as the Delta variant and requires an amended public health order.
6. Although it is likely that 85% of the total population of the County will become fully vaccinated on or before January 4, 2022, on December 28, 2021 the Acting Health Officer requested the Board of Health to rescind the automatic termination of Resolution No. 19-1043 when 85% of the total County population becomes fully vaccinated due to the high transmission rate of the Omicron variant, including an increasing number of breakthrough cases of individuals who are fully vaccinated.

7. The extremely high community transmission rate of the Omicron variant requires the Board of Health to continue the indoor mask requirements of Resolution No. 19-1043 in effect for the foreseeable future in order to mitigate the spread of the virus throughout the County.
8. Pursuant to Md. Code Ann. Local Government §10-328(b) a county may provide for the prevention of contagious diseases in the county.
9. 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.
10. Pursuant to Montgomery County Code 2-65, the Montgomery County Council is and may act as the County Board of Health.
11. Rule 4(d) of the Council's Rules of Procedure provides 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.
12. 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 amended 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 an emergency exists and approves the following amendments to the Board of Health regulation adopted on November 2, 2021 under Resolution No. 19-1043:

1 **1. Definitions.**

2 *County employee* means an individual employed by the County, regardless of the
3 individual's merit system status or representation by an employee organization.

4 *COVID-19 test* means a diagnostic test authorized by the Food and Drug
5 Administration to detect whether an Individual has a SARS-CoV-2 infection.

6 *Face covering* means a covering that fully covers a person's nose, mouth, and chin
7 and is secured to the person's head, including cloth face coverings, scarves, and
8 bandanas. It does not include face covering with a valve; or solely wearing a face
9 shield.

10 *High transmission* means 100 or more total cases per 100,000 population in the past
11 7 days or a 10.0% or greater test positivity in the past 7 days.

12 *Moderate transmission* means 10-49.99 total new cases per 100,000 persons in the
13 past 7 days or 5-7.99% test positivity during the past 7 days.

14 *Public transportation* means shared-ride surface transportation services that are
15 open to the general public, including without limitation, taxi services, ride-sharing
16 services, car services, and transit services operating within Montgomery County.
17 Examples of *public transportation* include Ride-On bus service, WMATA bus and
18 train service, MARC train service, and Mobility and Paratransit services.

19 *Substantial transmission* means 50-99.99 total new cases per 100,000 persons in
20 the past 7 days or 8-9.99% test positivity during the past 7 days.

21 **2. Face Coverings.**

22 a. *Requirement to Wear Face Coverings.* All persons in the County over the
23 age of two (2) years old must wear face coverings indoors at any location
24 accessible to the public.

25 b. *Exceptions.* Paragraph 2.a. does not require persons to wear face coverings:

26 i. if, due to a bona fide disability or medical condition, it would be
27 unsafe for the person to do so;

28 ii. to the extent wearing a face covering would impede communication
29 by or with persons who have a hearing impairment or other
30 disability, where the ability to see the mouth is essential for
31 communication;

32 iii. if wearing a face covering would subject the person to an unsafe

- 33 working condition, as determined by federal, state, or local
34 occupational safety regulators or workplace safety guidelines;
- 35 iv. to the extent wearing a face covering would make it impossible to
36 receive services requiring access to the face, mouth, or head,
37 including without limitation, dental care, shaving, and facial
38 treatments;
- 39 v. while consuming food or beverages;
- 40 vi. while swimming or engaging in other physical activities where the
41 use of a Face Covering is likely to pose a bona fide safety risk;
- 42 vii. while operating any public transportation conveyance, provided that
43 the person is:
- 44 (1) the sole operator of the conveyance, and
45 (2) located in a separate compartment that is off-limits to riders;
- 46 viii. to the extent it is necessary to observe the person's entire face to
47 verify such person's identity for bona fide security purposes;
- 48 ix. when a person is giving a speech or performing for broadcast or an
49 audience, if no one in a location accessible to the public is within six
50 feet of the speaker; or
- 51 x. pursuant to a Letter of Approval by the Health Officer or his
52 designee under paragraph 4 of this regulation.
- 53 c. The Board of Health must meet every two weeks to review the data provided
54 by the Health Officer on community transmission of the virus and consider
55 whether the indoor mask mandate must continue.

56 **3. Notice.**

57 The Health Officer or his designee promptly must notify the County Council Sitting
58 as the Board of Health, and the County Executive, of any change in the County's
59 transmission status. At least once daily, the Health Officer or his designee must
60 update the County website with the County's current community transmission
61 status, including information on the total new cases per 100,000 persons in the past
62 7 days and the test positivity percentage during the past 7 days.

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

- 64 a. If a person, organization, or venue is unclear about the application of this

65 regulation to their business, event, or activity, or seeks a modification to the
66 face covering requirement under paragraph 2.a. consistent with CDC
67 guidelines, they may seek a Letter of Approval from the Health Officer or
68 the Health Officer's designee.

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

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

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

80 e. A Letter of Approval may be issued by the Health Officer or the Health
81 Officer's designee only to the extent that the conditions of approval in the
82 Letter are consistent with CDC guidelines in place at the time the Letter is
83 issued.

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

87 **6. Applicability.** This regulation applies Countywide.

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

91 **8. Effective Date.** This regulation must take effect on January 5, 2022 at 12:00 a.m.

92 **9. Termination**

93 This regulation must terminate on January 31, 2022 at 11:59 p.m. without any
94 further action by the Board of Health or the Health Officer.

This is a correct copy of Council action.



Selena Mendy Singleton, Esq.,
Clerk of the Council