

Resolution No.: 19-1139  
Introduced: January 25, 2022  
Adopted: January 25, 2022

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

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Lead Sponsor: Council President at the Request of the Executive

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**SUBJECT:** Second Amended Board of Health Regulation to prevent the spread of COVID-19, and indoor mask guidance in Montgomery County

**Background**

1. On March 5, 2020, Lawrence J. Hogan, the Governor of the State of Maryland declared a state of emergency and catastrophic health emergency to control and prevent the spread of COVID-19, within Maryland, which expired on August 15, 2021. On January 4, 2022, the Governor declared a new state of emergency and catastrophic health emergency due to the surge in hospitalizations and widespread health impacts caused by the Omicron variant of COVID-19.
2. On July 27, 2021 the U.S. Centers for Disease Control and Prevention (CDC) 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 First Amended Board of Health Regulation adopted on January 4, 2022, through Resolution No. 19-1120, an indoor mask requirement for public spaces within the County will automatically terminate effective January 31, 2022 at 11:59 p.m.
5. Although the public health situation in the County has been aided tremendously by high vaccination rates among eligible County residents, the Omicron variant has become the dominant variant of the COVID-19 virus in the County. Omicron appears to be 6 times as transmissible as the Delta variant and requires an amended public health order.
6. The extremely high community transmission rate of the Omicron variant and high percentage of COVID-related hospital utilization 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.
7. Pursuant to Md. Code Ann. Local Government §10-328(b) a county may provide for the prevention of contagious diseases in the county.
8. 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.
9. Pursuant to Montgomery County Code 2-65, the Montgomery County Council is and may

act as the County Board of Health.

10. 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.
11. 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 January 4, 2022, under Resolution No. 19-1120:

1           **1.     Definitions.**

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

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

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

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

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

17          **2.     Face Coverings.**

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

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

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

24                ii.      to the extent wearing a face covering would impede communication  
25                by or with persons who have a hearing impairment or other  
26                disability, where the ability to see the mouth is essential for  
27                communication;

28                iii.     if wearing a face covering would subject the person to an unsafe  
29                working condition, as determined by federal, state, or local  
30                occupational safety regulators or workplace safety guidelines;

31                iv.     to the extent wearing a face covering would make it impossible to  
32                receive services requiring access to the face, mouth, or head,

- 33 including without limitation, dental care, shaving, and facial  
34 treatments;
- 35 v. while consuming food or beverages;
- 36 vi. while swimming or engaging in other physical activities where the  
37 use of a Face Covering is likely to pose a bona fide safety risk;
- 38 vii. while operating any public transportation conveyance, provided that  
39 the person is:
- 40 (1) the sole operator of the conveyance, and  
41 (2) located in a separate compartment that is off-limits to riders;
- 42 viii. to the extent it is necessary to observe the person's entire face to  
43 verify such person's identity for bona fide security purposes;
- 44 ix. when a person is giving a speech or performing for broadcast or an  
45 audience, if no one in a location accessible to the public is within six  
46 feet of the speaker; or
- 47 x. pursuant to a Letter of Approval by the Health Officer or his  
48 designee under paragraph 4 of this regulation.
- 49 c. The Board of Health must meet every week to review the data provided by  
50 the Health Officer on community transmission of the virus and consider  
51 whether the indoor mask mandate must continue. The Health Officer must  
52 provide the Board of Health with the levels in the County of the following  
53 three indicators along with the trend of each indicator for seven consecutive  
54 days:
- 55 i. Number of cases per 100,000 residents in the past seven days;  
56 ii. Test positivity rate; and  
57 iii. COVID-related hospital bed utilization case rate.

58 **3. Notice.**

59 The Health Officer or his designee promptly must notify the County Council Sitting  
60 as the Board of Health, and the County Executive, of any change in the County's  
61 transmission status. At least once daily, the Health Officer or his designee must  
62 update the County website with the County's current community transmission  
63 status, including information on the total new cases per 100,000 persons in the past  
64 7 days and the test positivity percentage during the past 7 days.



This is a correct copy of Council action.

  
Selena Mendy Singleton, Esq.,  
Clerk of the Council