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

Lead Sponsor: Council President at the Request of the Executive

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 Council is and may

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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:

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#### 1. Definitions.

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.

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

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

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 Ride-On bus service, WMATA bus and train service, MARC train service, and Mobility and Paratransit services.

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

### 2. Face Coverings.

- a. Requirement to Wear Face Coverings. All persons in the County over the age of two (2) years old must wear face coverings indoors at any location accessible to the public.
- b. Exceptions. Paragraph 2.a. does not require persons to wear face coverings:
  - i. if, due to a bona fide disability or medical condition, it would be unsafe for the person to do so;
  - ii. to the extent wearing a face covering would impede communication by or with persons who have a hearing impairment or other disability, where the ability to see the mouth is essential for communication;
  - iii. if wearing a face covering would subject the person to an unsafe working condition, as determined by federal, state, or local occupational safety regulators or workplace safety guidelines;
  - iv. to the extent wearing a face covering would make it impossible to receive services requiring access to the face, mouth, or head,

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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			х.	pursuant to a Letter of Approval by the Health Officer or his
48				designee under paragraph 4 of this regulation.
49		c.	The B	oard of Health must meet every week to review the data provided by
50			the He	ealth Officer on community transmission of the virus and consider
51			whethe	er the indoor mask mandate must continue. The Health Officer must
52			provid	e the Board of Health with the levels in the County of the following
53			three is	ndicators 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	<b>.</b>	
59		The H	ealth Of	ficer or his designee promptly must notify the County Council Sitting
60		as the	Board o	of Health, and the County Executive, of any change in the County's
61		transm	ission s	status. At least once daily, the Health Officer or his designee must
62		update	the Co	ounty website with the County's current community transmission
63		status.	includi	ng information on the total new cases per 100,000 persons in the past

7 days and the test positivity percentage during the past 7 days.

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## 4. Letters of Approval Consistent with CDC Guidance.

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

- b. Requests for a Letter of Approval must be submitted a minimum of 5 business days before a scheduled event or activity for which a Letter of Approval is required. Failure to submit a timely request will result in an automatic denial of the Letter of Approval.
- c. Failure to obtain a required Letter of Approval prior to proceeding with an event or activity will be considered to be a violation of this regulation and could subject the requestor, organization, or venue to the appropriate fines and sanctions.
- d. Any person, organization, or venue that is found to have held an unauthorized event or activity without a Letter of Approval will be automatically disqualified from receiving a future Letter of Approval.
- e. A Letter of Approval may be issued by the Health Officer or the Health Officer's designee only to the extent that the conditions of approval in the Letter are consistent with CDC guidelines in place at the time the Letter is issued.
- **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.
- **6. Applicability.** This regulation applies Countywide.
- 7. 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.
- **8. Effective Date.** This regulation must take effect on January 25, 2022 at 12:00 a.m.
- **9. Termination.** This regulation will terminate without any further action by the Board of Health on February 21, 2022.

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This is a correct copy of Council action.

Sciena Mendy Singleton, Esq., Clerk of the Council