

Clerk's Note: Line 224, Enforcement should be underlined.

Resolution No.:	<u>19-778</u>
Introduced:	<u>March 26, 2021</u>
Adopted:	<u>March 26, 2021</u>

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

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

SUBJECT: Second Amended 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, and 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, [and on] February 19, 2021, and on March 18, 2021 to control and prevent the spread of SARS-CoV-2 also known as COVID-19 within the state and both the state of emergency and catastrophic health emergency still exist in Maryland.
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 three 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); and the Brazil variant (known as P.1).
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 is the only jurisdiction in Maryland with 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 only 11.8% of the population of Montgomery County has been vaccinated for COVID-19.
8. COVID-19 in Montgomery County has caused disease in Montgomery County which thus far has claimed the lives of more than 1400 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, 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.
19. The Council, sitting as the Board of Health, adopted a Board of Health Regulation in Resolution No. 19-760 on March 12, 2021. The Council adopted the First Amended Regulation on March 19, 2021 in Resolution No. 19-768. This Board of Health Regulation would amend Resolution No. [19-760] 19-768.
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. [19-760] 19-768:

1 **1. Definitions.**

- 2 a. “*Face Covering*” means a covering that fully covers a person’s nose, mouth, and
3 chin and is secured to the person’s head, including cloth face coverings, scarves,
4 and bandanas. It does not include face covering with a valve; or solely wearing a
5 face shield.
- 6 b. “*Fitness Centers*” means a fitness center, dance studios, health clubs, health spas,
7 gyms, training facilities, ice rinks.
- 8 c. “*Foodservice Establishment*” means a restaurant, bars, or other similar
9 establishments that sell food or beverages for consumption on-premises in
10 Montgomery County and social and fraternal clubs with dining facilities.
- 11 d. “*Maximum Occupancy*” means (i) the maximum occupancy load of a facility under
12 the applicable fire code or pursuant to applicable laws, regulations, and permits. If
13 a facility is not rated for maximum occupancy, a person per square foot option must
14 be used to calculate maximum occupancy.
- 15 e. “*Personal Service Establishments*” means hair salons, barbershops, and
16 establishments that provide tanning, tattoo, waxing, threading, electrolysis,
17 cryotherapy, facial and other skin services, massage, and nail technician services.
- 18 f. “*Public Transportation*” means shared-ride surface transportation services that are
19 open to the general public, including without limitation, taxi services, ride-sharing
20 services, car services, and transit services operating within Montgomery County.
21 Examples of Public Transportation include, but are not limited, to Ride-On bus
22 service, WMATA bus and train service, MARC train service, and Mobility and
23 Paratransit services.
- 24 g. “*Religious Facilities*” means Churches, synagogues, mosques, temples, and other
25 similar religious facilities of any faith.
- 26 h. “*Social gatherings*” means a gathering of persons from more than one household.
27 It includes parties, receptions, parades, festivals, conventions, fundraisers,
28 community, recreational, leisure, and non-professional sports gatherings and
29 events.

30 **2. Face Coverings.**

- 31 a. *Requirement to Wear Face Coverings.*

- 32 i. All persons in the County over the age of two (2) years old must wear face
33 coverings:
- 34 1. pursuant to State Executive Order [21-03-09-01](#) paragraphs IV.a.i.1
35 – IV.a.ii;
- 36 2. at all times in a foodservice establishment unless actively engaged
37 in eating or drinking; and
- 38 3. when actively engaged in sports – except as recommended by the
39 [American Academy of Pediatrics](#).
- 40 b. *Exceptions*. Paragraph 2.a. does not require persons to wear Face Coverings:
- 41 i. Pursuant to State Executive Order 21-03-09-01 paragraph IV.b.

42 **3. General Operating Requirements.**

- 43 a. Unless expressly stated to the contrary, all businesses, organizations,
44 establishments, and facilities that are permitted to operate under this Order shall:
- 45 i. require strict adherence to social distancing of greater than 6 feet between:
- 46 1. employees and customers; and
- 47 2. individuals or groups of individuals from different households;
- 48 ii. utilize markings and signage to guide employees and customers;
- 49 iii. provide employees with guidance and training to reflect updated Centers for
50 Disease Control and Prevention (“CDC”) guidance for their workplace;
- 51 iv. use CDC and Environmental Protection Agency (“EPA”) approved
52 disinfectants to clean spaces daily; and
- 53 v. require employees to wash their hands hourly.
- 54 b. All businesses, organizations, establishments, and facilities that are permitted to
55 open shall post signage indicating that they are in compliance with all provisions
56 of paragraph 3.a of this Order.

57 **4. Letters of Approval.**

- 58 a. Requests for a Letter of Approval must be submitted a minimum of 5 business days
59 before the scheduled event. Failure to submit a timely request will result in an
60 automatic denial of the Letter of Approval.

- 61 b. Failure to obtain a Letter of Approval prior to proceeding with an event will be
62 considered to be a violation of this Order and could subject the requestor, organizer,
63 and venue to the appropriate fines and sanctions.
- 64 c. Any person, organizer, or venue who is found to have held an event without a Letter
65 of Approval will be automatically disqualified from receiving a future Letter of
66 Approval.

67 **5. Gatherings.**

- 68 a. Unless expressly stated in another paragraph of this Order:
- 69 i. Outdoor gatherings of more than 50 people are prohibited.
- 70 ii. Indoor gatherings of more than 25 people are prohibited.
- 71 iii.. The size of the location and venue of any gathering must accommodate
72 applicable social distancing for the number of attendees.
- 73 iv. If more than one household is present at a gathering each individual present
74 at the gathering must be counted for purposes of determining compliance.

75 **6. Businesses that May Open.**

- 76 a. *Foodservice Establishments.*
- 77 i. Total number of persons permitted in the indoor dining portion of the
78 foodservice establishment shall not exceed 25% of the maximum
79 occupancy.
- 80 ii. Outdoor dining at a foodservice establishment must follow [MDH Order No](#)
81 [2021-03-09-01](#) paragraph 2.A.
- 82 iii. May resume buffet service pursuant to [MDH Order No 2021-03-09-01](#).
- 83 iv. Must require all customers to wear Face Coverings unless actively engaged
84 in the act of eating or drinking (e.g. while seated at the table and talking but
85 not eating or drinking).
- 86 v. Must maintain a daily record of the date, time, name and contact
87 information for at least one person for each dining party and maintain the
88 daily record for at least 30 days, to assist with contact tracing: date;
- 89 vi. Must post signage at each outdoor dining entrance advising customers and
90 visitors that:

- 91 1. they must comply with the Face Covering requirements at all times
92 when they are not actively eating or drinking;
- 93 2. they must maintain social distancing of at least 6 feet when waiting
94 to be seated; and
- 95 3. failure to wear Face Coverings or maintain social distancing may
96 result in their being refused service and found to be in violation of
97 this order.
- 98 b. *Cigar Bars/Hookah Bars/Vape Shops.* May open solely to sell retail goods.
99 Smoking on site is strictly prohibited.
- 100 c. *Malls.*
- 101 i. Shopping centers with one or more enclosed pedestrian concourses may
102 maintain pedestrian concourses and other interior common areas open, but
103 solely to the extent necessary for the general public to enter and exit retail
104 establishments.
- 105 ii. Food courts located inside indoor malls shall follow paragraph 6.a.
- 106 iii. Congregating in any indoor area outside of retail stores is prohibited.
- 107 iv. Malls shall remove tables, chairs, benches, or any other items which could
108 encourage congregating from indoor areas outside of retail stores.
- 109 d. *Religious Facilities.*
- 110 i. The total number of persons permitted in a religious facility may not exceed
111 50% of the facility's maximum occupancy.
- 112 ii. Occupancy numbers shall include faith leaders, volunteers, and
113 congregants.
- 114 iii. Must follow spacing, screening, cleaning, and music guidelines as stated in
115 the County's [Religious Facilities Reopening](#) page.
- 116 e. *Sports.*
- 117 i. Except as provided in paragraph 6(e)(vii), all organized youth sports may
118 be played either indoors or outdoors only after a COVID Protocol Plan is
119 approved by the County Health Officer or the Officer's designee. The Plan
120 must align with guidelines by the Centers for Disease Control and

- 121 Prevention (CDC), Maryland State Department of Education (MSDE), and
122 Montgomery County, and include a plan for;
- 123 1. contact tracing with an attendance tracking sheet that must be
124 completed for all activities conducted;
 - 125 2. requiring that face coverings be worn per guidelines from the
126 American Academy of Pediatrics;
 - 127 3. social distancing with at least 6 feet between all participants to the
128 extent possible; and
 - 129 4. requiring the use of a student attestation form or COVID-19
130 Athlete/Coach Monitoring Form at all activities conducted.
- 131 Although voluntary, regular testing should be part of the COVID Protocol
132 Plan.
- 133 ii. A Letter of Approval must be obtained before any tournaments,
134 championships, or events are held in Montgomery County that are expected
135 to exceed guidelines.
 - 136 iii. All organized sports played in the County must comply with the gathering
137 guidelines described in paragraph 6(e)(i), including limiting the
138 participating athletes to those listed on the official roster as determined
139 through the Maryland Public Secondary Schools Athletic Association
140 (MPSSAA) or the organization's governing body or league, coaches, and
141 up to 12 additional participants acting in an official game capacity.
 - 142 iv. Sports played outside of an organized league must follow social gathering
143 guidelines and all persons must comply with the State mandate to use a face
144 covering whenever social distancing is not an option. The total number of
145 people present for outdoor sports played outside of an organized league is
146 limited to 50 and the total number of people present for indoor sports played
147 outside of an organized league is limited to 25.
 - 148 v. Play and games with teams from outside of Maryland, Virginia, or the
149 District of Columbia is prohibited.

- 150 vi. Sports may not open to the general public [or spectators]. On or after April
151 2, 2021, 2 spectators per participating athlete up to a maximum of 50
152 spectators may be permitted at a sports event if:
- 153 1. the site has a barrier to delineate the area for spectators from the area
154 for the participating athletes and coaches;
 - 155 2. the area for the spectators is large enough to provide for social
156 distancing between all spectators from different households; and
 - 157 3. all spectators wear face coverings and practice social distancing of
158 at least 6 feet.

159 The Health Officer or the Officer's designee may approve a COVID
160 Protocol Plan that includes more than 50 spectators for an event if the
161 Officer finds that the Plan provides for reasonable safety for all participants.

- 162 vii. An organized youth sports league that was approved to operate under a prior
163 Board of Health Regulation and was not classified as a high risk sport does
164 not need a new COVID Protocol Plan approved for any event that complies
165 with the gathering limits and restrictions of the prior approval.

166 **7. Businesses that may open at 25% Maximum Occupancy.**

- 167 a. *Fitness Centers.*
- 168 i. Fitness Centers that provide sport-specific training for high-risk sports as
169 defined in [Maryland Sports Commission Return to Play Report](#) must follow
170 the restrictions in paragraph 6.e above.
- 171 b. *Bowling Alleys.*
- 172 i. all equipment (balls, shoes, etc.) and spaces (lanes, tables, seats) must be
173 cleaned between each person(s) or group's use with CDC and EPA
174 approved cleaners; and
 - 175 ii. any foodservice establishment located within the bowling alley must follow
176 paragraph 6 of this Order.
- 177 c. *Escape Rooms.*
- 178 i. Only private games of a maximum of 6 people all permitted.
 - 179 ii. All games are by appointment only and must be staggered so as to prevent
180 patrons from interacting with others outside of their group.

- 181 iii. Before and after each game, all items in game rooms and items provided to
182 patrons (including but not limited to lock, props, and any touchable
183 surfaces) must be thoroughly cleaned using CDC and EPA approved
184 disinfectants.
- 185 d. *Museums and Art Galleries.*
- 186 i. Exhibits requiring contact (for example “please touch” exhibits or other
187 interactive displays) must remain closed.
- 188 e. *Personal Services.*
- 189 i. Staff are required to wear gloves, and any other Personal Protective
190 Equipment as appropriate to their workplace and provided service.
- 191 f. *Pools.*
- 192 i. Must strictly comply with any guidance issued by DHHS.
- 193 g. *Retail Establishments.*
- 194 i. Employees must use any additional Personal Protective Equipment as
195 appropriate to their workplace.
- 196 h. *Recreation Centers.*
- 197 **8. Other Businesses, Organizations, Establishments, and Facilities that may open on**
198 **March 26, 2021 at 25% capacity provided they do not sell or permit food for**
199 **consumption at the facility.**
- 200 a. *Amusement parks.* Including stand-alone types, such as, but not limited to merry-
201 go-rounds and roller coasters.
- 202 b. *Bingo halls.*
- 203 c. *Go-kart tracks.*
- 204 d. *Roller skating rinks.*
- 205 e. *Social Clubs.*
- 206 f. *Theaters.* This Order controls the occupancy and use of theatres in Montgomery
207 County at which live performances occur or motion pictures are shown
208 (“Theaters”).
- 209 g. *Trampoline Parks.*
- 210 h. Any other establishment not listed above that is subject to the admission and
211 amusement tax under Title 4 of the Tax-General Article of the Maryland Code.

- 212 **9. Capacity Limits on March 26, 2021.** The 25% capacity limits imposed for facilities in
213 paragraphs 6a and 7 above are raised to 50% of capacity on March 26, 2021.
- 214 **10. Minimal Operations.** Staff and owners may continue to be on-site at any business,
215 organization, establishment, or facility that is required to be closed pursuant to this Order
216 only for the following purposes:
- 217 a. Facilitating remote working (a/k/a/ telework) by other staff;
- 218 b. Maintaining essential property;
- 219 c. Preventing loss of, or damage to property, including without limitation, preventing
220 spoilage of perishable inventory;
- 221 d. Performing essential administrative functions, including without limitation, picking
222 up mail and processing payroll; and
- 223 e. Caring for live animals.
- 224 **11. Enforcement.** This Order must be enforced by any County department or agency that has
225 authority over the subject matter of any particular provision and the Montgomery County
226 Police Department.
- 227 **12. Applicability.** This regulation applies Countywide.
- 228 **13. Severability.** If the application of this regulation or any part of it to any facts or
229 circumstances is held invalid, the rest of the regulation and its application to all other facts
230 and circumstances is intended to remain in effect.
- 231 **14. Effective Date.** This regulation takes effect on [March 19, 2021] April 2, 2021 at 5 p.m.

This is a correct copy of Council action.



Selena Mendy Singleton, Esq.,
Clerk of the Council