



Committee: Directly to Council
Committee Review: N/A
Staff: Robert H. Drummer, Senior Legislative Attorney
Purpose: Final action – vote expected

AGENDA ITEMS# 2D&2E
 January 25, 2022
Public Hearing/Action

SUBJECT

Resolution to approve a Second Amended Board of Health Regulation to prevent the spread of COVID-19, and indoor mask guidance in Montgomery County

Lead Sponsor: Council President at the Request of the Executive

EXPECTED ATTENDEES

- Dr. James C. Bridgers, Jr., Acting Health Officer
- Dr. Earl Stoddard, Assistant Chief Administrative Officer
- Dr. Raymond Crowell, HHS Director

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

Introduction, Public Hearing, and Action on a Resolution to approve a Second Amended Board of Health Regulation to prevent the spread of COVID-19, and indoor mask guidance in Montgomery County

DESCRIPTION/ISSUE

The resolution would approve an amended Board of Health regulation to prevent the spread of COVID-19, and indoor mask guidance in Montgomery County. Specifically, the resolution would extend the current January 31 termination date until the earlier of:

- a. When the Health Officer notifies the Board of Health that the CDC lists the following three indicators as both below high levels and trending down for seven consecutive days:
 - i. Number of cases per 100,000 residents in the past seven days;
 - ii. Test positivity rate; and
 - iii. COVID-related hospital bed utilization case rate; or
- b. February 28, 2022 at 11:59 p.m.

This report contains:

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Proposed Resolution – showing changes	©1
Proposed Resolution – changes incorporated	©7

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M E M O R A N D U M

January 21, 2022

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney

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

PURPOSE: Introduction / Public Hearing / Action – vote expected

Expected Attendees

Dr. James C. Bridgers, Jr., Acting Health Officer
Dr. Earl Stoddard, Assistant Chief Administrative Officer
Dr. Raymond Crowell, HHS Director

The Council, sitting as the Board of Health, is scheduled to introduce, hold a public hearing, and act on a Second Amended Board of Health regulation to prevent the spread of COVID-19, and to provide mask guidance, in the County. The Lead Sponsor is the Council President at the Request of the Executive. Specifically, the resolution would extend the automatic termination date of the existing indoor masking requirements that apply in publicly accessible areas of the County.

Background

Under the current Board of Health regulation, adopted under Resolution No. 19-1120 on January 4, 2022, the indoor masking requirement for public places was reinstated with an automatic termination date of January 31, 2022.

The January 4 Regulation requires face coverings to be worn indoors in public areas of the County with some exceptions during a period of substantial or high transmission. 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. The Order also terminates without further action on January 31.

Unfortunately, the Omicron variant has pushed the County into an extended period of high transmission. 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. **As of January 20, the County has experienced 1022.5 new cases per 100,000 persons in the past 7 days.** Consequently, the Health Officer requested the Board of Health to extend the automatic termination of the indoor mask mandate currently scheduled to expire on January 31.

Statutory Authority

Pursuant to Md. Code Ann. Local Government §10-328(b) a county may provide for the prevention of contagious diseases in the county. 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. Pursuant to Montgomery County Code 2-65, the Montgomery County Council is and may act as the County Board of Health.

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. Notice was sent to each municipality in the County on December 29, 2021.

Specifics of the Resolution

The proposed Second Amended Board of Health Regulation to prevent the spread of COVID-19, and indoor mask guidance in Montgomery County would extend the automatic termination of the current indoor mask mandate scheduled to occur January 31, 2022 until the earlier of:

- a. When the Health Officer notifies the Board of Health that the CDC lists the following three indicators as both below high levels and trending down for seven consecutive days:
 - i. Number of cases per 100,000 residents in the past seven days;
 - ii. Test positivity rate; and
 - iii. COVID-related hospital bed utilization case rate; or
- b. February 28, 2022 at 11:59 p.m.

If adopted, the resolution would take effect on January 26 at 12:00 am. The Acting Health Officer, Dr. James Bridgers, recommends this proposed resolution. The Board of Health is scheduled to introduce, hold a public hearing, and act on this proposed resolution on Tuesday, January 25.

This packet contains:

- Proposed Resolution – showing changes
- Proposed Resolution – changes incorporated

Circle #

- 1
- 7

Resolution No.: _____
Introduced: January 25, 2022
Adopted: _____

**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: [First] Second 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.] 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) [, 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 First Amended Board of Health Regulation adopted on [November 2, 2021] January 4, 2022, through Resolution No. [19-1043] 19-1120, 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] 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, [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.] the Omicron variant has become the dominant variant of the COVID-19 virus [throughout the United States, including Maryland] in the County. 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] 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.
- [8] 7. Pursuant to Md. Code Ann. Local Government §10-328(b) a county may provide for the prevention of contagious diseases in the county.
- [9] 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.
- [10] 9. Pursuant to Montgomery County Code 2-65, the Montgomery County Council is and may act as the County Board of Health.
- [11] 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.
- [12] 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 [November 2, 2021] January 4, 2022, under Resolution No. [19-1043] 19-1120:

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] week to review the data
54 provided by the Health Officer on community transmission of the virus and
55 consider 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] January 25,
92 2022 at 12:00 a.m.
- 93 **9. Termination.** [This regulation must terminate on January 31, 2022 at 11:59 p.m.
94 without any further action by the Board of Health or the Health Officer.]
95 This regulation must terminate without any further action by the Board of Health
96 at the earlier of the following:

- 97 a. When the Health Officer notifies the Board of Health that the CDC lists the
98 following three indicators as both below high levels and trending down for
99 seven consecutive days:
- 100 i. Number of cases per 100,000 residents in the past seven days;
101 ii. Test positivity rate; and
102 iii. COVID-related hospital bed utilization case rate; or
103 b. February 28, 2022 at 11:59 p.m.

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:

Resolution No.: _____
Introduced: January 25, 2022
Adopted: _____

**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 County Council is and may

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.

52 **3. Notice.**

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

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

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

- 65 b. Requests for a Letter of Approval must be submitted a minimum of 5
66 business days before a scheduled event or activity for which a Letter of
67 Approval is required. Failure to submit a timely request will result in an
68 automatic denial of the Letter of Approval.
- 69 c. Failure to obtain a required Letter of Approval prior to proceeding with an
70 event or activity will be considered to be a violation of this regulation and
71 could subject the requestor, organization, or venue to the appropriate fines
72 and sanctions.
- 73 d. Any person, organization, or venue that is found to have held an
74 unauthorized event or activity without a Letter of Approval will be
75 automatically disqualified from receiving a future Letter of Approval.
- 76 e. A Letter of Approval may be issued by the Health Officer or the Health
77 Officer's designee only to the extent that the conditions of approval in the
78 Letter are consistent with CDC guidelines in place at the time the Letter is
79 issued.
- 80 **5. Enforcement.** This Order must be enforced by any County department or agency
81 that has authority over the subject matter of any particular provision and the
82 Montgomery County Police Department.
- 83 **6. Applicability.** This regulation applies Countywide.
- 84 **7. Severability.** If the application of this regulation or any part of it to any facts or
85 circumstances is held invalid, the rest of the regulation and its application to all
86 other facts and circumstances is intended to remain in effect.
- 87 **8. Effective Date.** This regulation must take effect on January 25, 2022 at 12:00 a.m.
- 88 **9. Termination.** This regulation will terminate without any further action by the
89 Board of Health at the earlier of the following:
- 90 a. When the Health Officer notifies the Board of Health that the CDC lists the
91 following three indicators as both below high levels and trending down for
92 seven consecutive days:
- 93 i. Number of cases per 100,000 residents in the past seven days;
94 ii. Test positivity rate; and
95 iii. COVID-related hospital bed utilization case rate; or
- 96 b. February 28, 2022 at 11:59 p.m.