

*Clerk's note: Inadvertently posted as Resolution 19-496.*

Resolution No.:	<u>19-497</u>
Introduced:	<u>June 16, 2020</u>
Adopted:	<u>June 16, 2020</u>

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

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Lead Sponsor: County Council

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**SUBJECT:** Board of Health Regulation approving Executive Order 082-20, COVID-19 Local Order – Phase 2

**Background**

1. County Code §2-65, as amended effective August 10, 2000, provides that the County Council is, and may act as, the County Board of Health, and in that capacity may adopt any regulation which a local Board of Health is authorized to adopt under state law.
2. Maryland Code Health-General Article §3-202(d) authorizes the County Board of Health to adopt rules and regulations regarding any nuisance or cause of disease in the County.
3. On March 5, 2020, Lawrence Hogan, Jr., Governor of Maryland issued a proclamation declaring a state of emergency and existence of a catastrophic public health emergency due to the novel coronavirus which can cause the respiratory disease COVID-19.
4. On May 13, 2020, Governor Hogan issued State Executive Order 20-05-13-01 that continues to restrict gatherings of more than ten people for social, community, recreational, leisure, and sporting activities and events, requires the continued closure of certain non-essential businesses, and allows for the limited re-opening of certain businesses and activities under certain conditions.
5. State Executive Order 20-05-13-01 gave Maryland counties the authority to continue to impose limitations on business and personal activities that were more restrictive than those permitted by State Executive Order Number 20-05-13-01, if the political subdivision determines that it is necessary and reasonable to do so in order to prevent the spread of COVID- 19.
6. On May 15, 2020, the Executive issued Montgomery County Executive Order 067-20 which was more restrictive than State Executive Order 20-05-13-01 and included criteria for safely lifting the stay at home order and beginning to reopen businesses. The Council approved EO 067-20 and the County Health Officer adopted it as a health directive on May 15, 2020.

7. On May 27, 2020, the Governor issued State Executive Order 20-05-27-01 further expanding reopening of certain businesses and facilities, subject to local regulations.
8. On May 28, 2020, Montgomery County had demonstrated significant progress and trends towards meeting much of the criteria listed in County Executive Order 067-20. County Executive Elrich issued Executive Order No. 070-20, COVID-19 Local Order reducing some of the stay at home restrictions in the County beginning on June 1, 2020.
9. On June 10, 2020, Governor Hogan issued Executive Order 20-06-10-01 lifting more restrictions in the State but again gave Maryland Counties the authority to continue to impose limitations on business and personal activities that were more restrictive than those permitted under the Governor's Executive Order.
10. On June 15, 2020, the Executive and the County Health Officer determined that it is necessary and reasonable to continue to impose limitations that are more restrictive than the Governor's Order to prevent the spread of COVID-19 but that some restrictions could be lifted. The Executive issued an Executive Order on June 15 and amended it on June 16. EO 082-20 would, effective Friday, June 19, 2020 at 5 pm move the County into Phase 2 by lifting the stay at home order and certain other restrictions on businesses and activities.
11. 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.
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 concerning the need to lift the stay at home order and reduce some restrictions as described in Executive Order 082-20, COVID-19 Local Order – Phase 2.

### **Action**

The County Council for Montgomery County, Maryland, sitting as the County Board of Health, approves the following regulation:

Executive Order 082-20, COVID-19 Local Order – Phase 2, attached hereto, is adopted as a Board of Health Regulation for Montgomery County as of June 19, 2020 at 5 pm.

This is a correct copy of Council action.

  
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Selena Mendy Singleton, Esq.,  
Clerk of the Council



# MONTGOMERY COUNTY EXECUTIVE ORDER

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject COVID-19 Local Order – Phase 2	Executive Order No. 082-20	Subject Suffix
Department Office of the County Executive	Department No.	Effective Date 6/19/2020

## BACKGROUND

WHEREAS, a state of emergency and catastrophic health emergency was proclaimed by Lawrence J. Hogan, the Governor of the State of Maryland on March 5, 2020, and renewed on March 17, 2020, April 10, 2020, May 6, 2020, and on June 3, 2020, to control and prevent the spread of 2019 Novel Coronavirus (“SARS-CoV-2”) and the disease that it causes - Coronavirus Disease 2019 (“COVID-19”);

WHEREAS, the effects of COVID-19 require that local officials be vigilant in advising the residents of measures they can take to protect health, safety, and welfare;

WHEREAS, the currently known and available scientific evidence and best practices support limitations on large gatherings, use of face coverings, and continued social distancing to prevent exposures and transmissions, and reduce the threat to especially vulnerable populations, including older individuals and those with chronic health conditions;

WHEREAS, 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 the Montgomery County continue to engage in social distancing, use of face coverings, and refrain from congregating in large groups;

WHEREAS, Montgomery County, Maryland has been under a stay at home order for the purpose of the control and medical containment of COVID-19;

WHEREAS, on May 15, 2020, I issued County Executive Order Number 067-20 which provided the following criteria for lifting the stay at home order:

1. sustained (14 days) decreases (rolling average) in:
  - a. the number of new cases in the setting of increased testing;
  - b. COVID-19 related hospitalization rate;
  - c. COVID-19 related ICU rate;
  - d. COVID-19 related fatalities;
  - e. COVID-19 like and influenza like illnesses presenting to the health care system;
  - f. percentage of Acute bed usage by COVID-19 related patients;
  - g. percentage of ICU bed usage by COVID-19 related patients;
  - h. percentage of emergency/critical care equipment by COVID-19 related patients (e.g. ventilators);
2. a sustained capacity to test 5% of population per month;
3. a sustained flattening or decrease in test positivity;
4. sustained, robust system in place to contact initial interviews within 24 hours, and initiate contact tracing process within 48 hours of initial lab notification; and



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5. initiated and created meaningful infrastructure to identify and begin addressing demonstrated COVID related inequities in health outcomes, access to social support services.

WHEREAS, Montgomery County has met all but the following of the above criteria:

1. sustained (14 days) decreases (rolling average) in:
  - a. the number of new cases in the setting of increased testing;
  - f. percentage of Acute bed usage by COVID-19 related patients; and
2. a sustained capacity to test 5% of population per month;

WHEREAS, 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;

WHEREAS, on June 10, 2020 Governor Hogan issued State Executive Order [20-06-10-01](#) which gave Maryland counties the authority to continue to impose limitations on business and personal activities that were more restrictive than those permitted by State Executive Order Number [20-06-10-01](#), if the political subdivision determines that it is necessary and reasonable to do so in order to prevent the spread of COVID-19; and

WHEREAS Montgomery County has determined that it is necessary and reasonable to continue to impose limitations on business and personal activities that are more restrictive than those permitted by State Executive Order Number [20-06-10-01](#) in order to prevent the spread of COVID-19;

NOW, THEREFORE, BE IT ORDERED, PURSUANT TO THE AUTHORITY GRANTED IN GOVERNOR HOGAN'S EXECUTIVE ORDER NUMBER [20-06-10-01](#) AND IN AN EFFORT TO PROTECT THE PUBLIC HEALTH, WELFARE, AND SAFETY, AND CONTROL AND PREVENT THE SPREAD OF COVID-19 WITHIN MONTGOMERY COUNTY, I HEREBY ORDER:

1. Administrative and Implementing Provisions. County Executive Order Number 067-20 dated May 15, 2020, as amended and restated by Order No. 070-20 dated May 28, 2020 as further amended and restated in its entirety as set forth herein.
2. The Stay at Home Order is Lifted.
  - a. The stay at home order is lifted effective 5:00 p.m., Friday June 19, 2020.
  - b. Residents of Montgomery County are encouraged to remain at home but are no longer required to do so.



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### 3. General Operating Requirements.

- a. All businesses, organizations, establishments, and facilities that are permitted to operate under this Order shall, as a condition of their continued operation:
  - i. require employees and customers to maintain social distancing of greater than 6 feet, whenever possible, as recommended by the U.S. Centers for Disease Control and Prevention (“CDC”) and the Maryland Department of Health (“MDH”);
  - ii. utilize markings and signage to guide employees and customers;
  - iii. require all employees and all customers over the age of 2 to wear face coverings in accordance with the [State Executive Order 20-04-15-01](#) entitled Requiring Use of Face Coverings Under Certain Circumstances and Requiring Implementation of Certain Physical Distancing Measures, (“Face Coverings Order”);
  - iv. provide employees with guidance and training to reflect updated CDC guidelines for their workplace;
  - v. use CDC and Environmental Protection Agency approved disinfectants to clean spaces daily; including use of disinfectants to wipe down surfaces high contact surfaces at least once every 2 hours while staff or customers are present (“high contact surfaces” are surfaces that will have human contact at least once an hour);
  - vi. require employees to wash their hands hourly; and
  - vii. review and implement new CDC, MDH, and Montgomery County Department of Health & Human Services guidelines as they are received.
- b. All businesses, organizations, establishments, and facilities in Montgomery county shall comply with any orders issued by the Local Health Officer, pursuant to [State Executive Order Number 20-04-05-02](#) (“Delegating Authority to Local Officials to Control and Close Unsafe Facilities”), as it may be amended from time to time.
- c. All businesses, organizations, establishments, and facilities that are permitted to open shall post signage indicating that they are in compliance with all provisions of paragraph 3.a of this Order.

### 4. Indoor and Outdoor Gathering. Indoor and outdoor social, community, recreational, leisure, and sporting gatherings may resume provided the following physical precautions are met and followed:

- a. general operating requirements as stated in paragraph 3 of this Order;
- b. limited to 1 person or household per 200 sq. ft. or a maximum of 50 people, whichever is lower; and
- c. the size of the location and venue must accommodate applicable social distancing for the number of attendees.



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5. Large Gatherings. Gatherings of more than 50 people continue to be prohibited at all locations and venues, including but not limited to parades, festivals, conventions, and fundraisers. Planned large gatherings and events must be canceled or postponed until after termination of the state of emergency and the proclamation of the catastrophic health emergency has been rescinded.
6. Childcare. Childcare providers may reopen provided the following physical precautions are met and followed:
  - a. general operating requirements as stated in paragraph 3 of this Order; and
  - b. guidance as issued by MDH and as amended from time to time.
7. Fitness Centers.
  - a. This Order controls the occupancy and use of fitness centers, health clubs, health spas, gyms, and other indoor physical activities in Montgomery County (“Fitness Centers”).
  - b. Fitness Centers in Montgomery County may reopen provided the following physical precautions are met and followed:
    - i. general operating requirements as stated in paragraph 3 of this Order;
    - ii. limit of 1 patron per 200 sq. ft. of indoor space;
    - iii. require patrons to wear masks while exercising; and
    - iv. follow the State’s [Best Practices for Fitness Centers, Martial Arts, Dance Studios](#) as amended from time to time.
8. Foodservice Establishments.
  - a. Restaurants, bars, and other similar establishments that sell food or beverages for consumption on-premises in Montgomery County (“Restaurants and Bars”), and (b) social and fraternal clubs (“Social Clubs”) with dining facilities may, to the extent permitted by applicable law:
    - i. serve food and beverages to customers for consumption in indoor and outdoor seating areas; and
    - ii. continue to sell food and beverages that are promptly taken from the premises, i.e., on a carry-out, drive-through, or delivery basis.
  - b. Foodservice establishments are prohibited from serving food in a buffet format.
  - c. Foodservice establishments must follow MDH’s [Directive and Order Regarding Food Service Establishments](#) (Order No. MDH 2020-06-10-01).
  - d. Foodservice establishments must post signage at each entrance advising customers and visitors that:
    - i. they must comply with the [Face Coverings Order](#) at all times when they are not seated at a table or bar;
    - ii. they must maintain social distancing of at least 6 feet when waiting to be seated;



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- iii. they must maintain social distancing of at least 6 feet when seated at a bar; and
- iv. failure to wear face coverings as required or maintain social distancing may result in their being:
  - (1) refused service; and
  - (2) found to be in violation of this Order and subject to criminal penalties as stated in paragraph 23 of this Order.
- e. As used in this paragraph 8.a of this Order:
  - i. the term “indoor seating area” means a portion of a Foodservice Establishment that is an indoor area, as defined in COMAR 10.19.04.02.B(9); and
  - ii. the term “outdoor seating area” means a portion of a Foodservice Establishment that is not an indoor seating area.
- 9. Malls. This Order controls the occupancy and use of shopping centers in Montgomery County that have one or more enclosed pedestrian concourses (“Enclosed Malls”).
  - a. Enclosed Malls are permitted to reopen pedestrian concourses and other interior common areas, but solely to the extent necessary for the general public to enter and exit retail establishments.
  - b. Enclosed Malls must comply with the general operating requirements as stated in paragraph 3 of this Order.
- 10. Manufacturing. All manufacturing businesses and facilities in Montgomery County may fully reopen provided they comply with the general operating requirements as stated in paragraph 3 of this Order.
- 11. Miniature Golf. Miniature golf establishments may reopen provided they comply with the general operating requirements as stated in paragraph 3 of this Order.
- 12. Office Space. Although telework continues to be strongly encouraged, all offices in Montgomery County may reopen provided they comply with the general operating requirements as stated in paragraph 3 of this Order.
- 13. Outdoor Recreation. The following establishments in Montgomery County are open to the general public subject to the general operating requirements as stated in paragraph 3 of this Order:
  - a. parks for personal fitness and fitness classes;
  - b. golf courses and driving ranges;
  - c. outdoor archery and shooting ranges;
  - d. marinas and watercraft rental businesses;
  - e. campgrounds;
  - f. horse boarding and riding facilities; and



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g. playgrounds.

14. Youth Camp Programs. Youth camp programs in Montgomery County may reopen, subject to the Maryland Department of Health's ("MDH") [Amended Directive and Order Regarding Youth Camp Programs](#) (No. MDH 2020-06-12-02) and any subsequent amendments thereto.
  - a. Youth camp programs must meet and follow the following physical precautions:
    - i. all applicable directives and orders issued by the Secretary of the MDH; and
    - ii. any guidance published by the CDC and MDH including [MDH's Interim Guidance for Limited Outdoor Youth Sports](#) dated May 27, 2020, and any subsequent amendments thereto.
15. Outdoor Youth Sports. Any business providing skill-building drills and team-based practice in Montgomery County for individuals under the age of 18 must comply with [MDH's Interim Guidance for Limited Outdoor Youth Sports](#) dated May 27, 2020, and any subsequent amendments thereto.
16. Personal Services. Hair salons, barbers, and establishments that provide nail technician services ("Personal Services Establishments") may reopen, by appointment only, to provide personal services, with the exception of those services prohibited by paragraph 21.e of this Order, provided the following physical precautions are met and followed:
  - a. general operating requirements as stated in paragraph 3 of this Order;
  - b. all staff are required wear gloves, and any additional Personal Protective Equipment ("PPE") as appropriate to their workplace and provided service;
  - c. limit of 1 customer for every 200 sq. ft of service delivery space;
  - d. limit of 1 customer in a waiting area at a time, other customers waiting for appointments must wait outside the Personal Services Establishments; and
  - e. follow the State's [Best Practices for Personal Service](#) Establishments as amended from time to time.
17. Pools. All indoor and outdoor swimming pools may reopen provided they strictly comply with the [Montgomery County Department of Health and Human Services Pool Guidance](#).
18. Religious Facilities. Churches, synagogues, mosques, temples, and other similar religious facilities of any faith in Montgomery County ("Religious Facilities") may open to the general public for indoor and outdoor services provided the Religious Facility complies with the following:
  - a. general operating requirements as stated in paragraph 3 of this Order; and
  - b. 1 participant (or one household group) for every 200 sq. ft of religious ceremony space.



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19. Retail Establishments. Retail businesses, organizations, establishments, and facilities (Retail Establishments) within Montgomery County may reopen to the public provided the following physical precautions are met and followed:

- a. general operating requirements as stated in paragraph 3 of this Order;
- b. limit of 1 customer per 200 sq. ft of in-store space; and
- c. employees are required to use any additional PPE as appropriate to their workplace.

20. Other Businesses That May Reopen.

- a. Car washes. Car washes may reopen for the purpose of cleaning the interior and exterior of vehicles with the following physical precautions:
  - i. general operating requirements as stated in paragraph 3 of this Order; and
  - ii. all staff are required use any additional PPE as appropriate to their workplace.
- b. Fully automated car washes. May continue to provide full operations. A car wash is considered “fully-automated” if the customer remains in their car at all times, no employees are required to interact with the customer or the customer’s vehicle, and payment is processed electronically.
- c. Farms. Farms may continue to permit “pick-your-own” produce picking by members of the public so long as they comply the general operating requirements as stated in paragraph 3 of this Order.

21. Businesses, Organizations, Establishments, and Facilities Required to Close.

- a. Senior Centers. All senior citizen activities centers (as defined in Section 10-501(i) of the Human Services Article of the Maryland Code) shall remain closed until after termination of the state of emergency and the proclamation of the catastrophic health emergency has been rescinded.
- b. Restaurants and Bars.
  - i. This Order controls the occupancy and use of restaurants, bars, and other similar establishments that sell food or beverages for consumption on premises in Montgomery County (“Restaurants and Bars”). This Order does not apply to food or beverage services in health care facilities, which are expressly excluded from the definition of “Restaurants and Bars.”
- c. Theaters.
  - i. This Order controls the occupancy and use of theatres in Maryland at which live performances occur or motion pictures are shown (“Theaters”).
  - ii. All Theaters shall remain closed to the general public.
- d. Other Recreational Establishments. The following establishments (“Recreational Establishments”) shall remain closed to the general public (including members, in the case of private clubs):
  - i. bingo halls;
  - ii. bowling alleys;



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- iii. pool halls;
  - iv. amusement parks;
  - v. roller and ice skating rinks;
  - vi. Social Clubs; and
  - vii. any other establishment not listed above that is subject to the admission and amusement tax under Title 4 of the Tax-General Article of the Maryland Code.
- e. Other Miscellaneous Establishments.
- i. The following establishments shall remain closed to the general public:
    - (1) tattoo parlors;
    - (2) tanning salons;
    - (3) massage parlors; and
    - (4) establishments that provide esthetic services (as described in Title 5 of the Business Occupations Article of the Maryland Code).
  - ii. The term “massage parlors” in paragraph 21.e.i(3) does not include licensed massage therapists providing massage therapy in health care settings, as defined in Title 6 of the Health Occupations Article of the Maryland Code.

22. I hereby adopt by reference the following portions of State Executive Order [20-06-10-01](#):

- a. paragraph III.j. (“Determination of Maximum Occupancy”);
- b. paragraph IV.c (“Minimal Operations”);
- c. paragraph V (“Specific Exclusions”) and all of its subparagraphs;
- d. paragraph VI (“Government Buildings and Facilities with Large Occupancy or Attendance”) and all of its subparagraphs; and
- e. paragraph VII (“General Provisions”) and all of its subparagraphs.

23. Pursuant to State Executive Order [20-06-10-01](#) paragraph VII.b, a person who knowingly and willfully violates this Order is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding one year or a fine not exceeding \$5,000 or both.

24. Enforcement of this Local Order shall be done in accordance with the provisions established in State Executive Order [20-06-10-01](#).

25. This Local Order may be amended, upon consultation with the Local Health Officer and the approval of the Montgomery County Council.

26. If any provision of this Local Order or its application to any person, entity, or circumstance is held invalid by any court of competent jurisdiction, all other provisions or applications of the Order shall remain in effect to the extent possible without the invalid provision or application. To achieve this purpose, the provisions of this Local Order are severable.



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27. This Local Order shall take effect June 19, 2020 at 5:00 p.m.

By:   
MARC ELRICH  
County Executive

Approved as to form and legality:  
Office of the County Attorney

By:   
Silvia C. Kinch, Division Chief

Date: 6/16/2020