



Committee Directly to Council
Staff: Robert H. Drummer, Senior Legislative Attorney
Purpose: Final action – vote expected
Keywords: #Covid-19StayAtHomeOrder

AGENDA ITEM #1
May 15, 2020
Action

SUBJECT

Resolution to approve Executive Order No. 067-20, COVID-19 Local Order
Lead Sponsor: County Council

EXPECTED ATTENDEES

None

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- To introduce Resolution followed by action – Council vote expected.

DESCRIPTION/ISSUE

- The ongoing Covid-19 public health emergency has created significant damage to the County's economy.
- The Governor authorized local Counties to issue more restrictive stay at home orders based on local data.

SUMMARY OF KEY DISCUSSION POINTS

- This Resolution would approve Executive Order 067-20, COVID-19 Local Order and extend the Governor's May 6 Stay-at-Home Order until certain criteria related to slowing the spread of the virus are met.

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M E M O R A N D U M

May 15, 2020

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney

SUBJECT: Resolution to approve Executive Order No. 067-20, COVID-19 Local Order¹

PURPOSE: Introduction/Action – Council vote required

Maryland Governor Lawrence J. Hogan declared a state of emergency and catastrophic health emergency on March 5, 2020. The Governor's declaration was renewed on March 17, 2020 to control and prevent the spread of COVID-19 within the State. The Centers for Disease Control (CDC) advises that social distancing is the most effective way of slowing the spread of COVID-19. The serious health risk to County residents continues despite efforts to require social distancing.

On March 30, 2020, Governor Hogan issued Executive Order 20-03-30-01 which ordered all non-essential employees in the State to stay at home for an undetermined period to try to slow the spread of the virus. On May 13, 2020, Governor Hogan issued Executive Order 20-05-13-10 which began a slow opening of the State's economy, and gave Maryland Counties the discretion to continue to enforce the Governor's stay at home Order based on a review of local data concerning the spread of COVID-19 in that County.

The County's Local Health Officer, Dr. Travis Gayles, has developed criteria to safely lift the stay at home restrictions when appropriate. Dr. Gayles told the Council on May 14 that the County has not yet met all the criteria necessary to begin lifting the stay at home restrictions.

The Executive has agreed with other local officials representing other local governments in the Washington Metropolitan Area that a unified continuation of these restrictions is both necessary and appropriate at this time. Continuing the stay at home restrictions in the County currently is consistent with the guidance from the CDC and other public health officials.

On May 15, 2020, County Executive Elrich issued Executive Order No. 067-20, COVID-19 Local Order continuing the stay at home restrictions in the County until certain criteria in slowing the spread of the virus are met. See ©3-10.

Executive Order No. 067-20 does not provide an arbitrary date for reopening. The decision to reopen would be based on science and local guidance from public health officials. The Executive Order provides that the stay at home restrictions would be lifted when the County achieves:

¹ #Covid-19StayAtHomeOrder

1. a sustained decrease (rolling average) during a 14-day period of;
 - (a) new cases in an environment 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 health care system;
 - (f) percentage of acute bed usage by COVID-19 patients;
 - (g) percentage of ICU bed usage by COVID-19 patients;
 - (h) percentage of emergency/critical care equipment used by COVID-19 patients;
2. a sustained capacity to test 5% of the population per month;
3. a sustained decrease in positive tests;
4. a sustained, robust system of contact tracing; and
5. the beginning of a meaningful infrastructure to identify and begin addressing demonstrated COVID-19 related inequities in health outcomes.

The Executive Order would extend the restrictions in the Governor’s May 6 Stay-at-Home Order, Executive Order No. 20-05-06-01 for the County until the County has met the criteria described in Executive Order 067-20 and summarized above.

Since Executive Order 067-20 relies on the Governor’s last stay at home order, the State’s Office of Legal Counsel interpretive guidance would be used to respond to questions. The orders and guidance can be viewed at: <https://governor.maryland.gov/covid-19-pandemic-orders-and-guidance/> . Elective surgery, routine doctor visits, and routine dental work are covered by a Directive issued by the State’s Secretary of Health and are not impacted by the Governor’s Orders. See <https://governor.maryland.gov/wp-content/uploads/2020/05/05.06.2020-MDH-Sec-Order-Amended-Various-Healthcare-Matters.pdf> .

This packet contains:	<u>Circle #</u>
Resolution	1
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Resolution No.: _____
Introduced: May 15, 2020
Adopted: _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY MARYLAND**

Lead Sponsor: County Council

SUBJECT: Approval of Executive Order No. 067-20, COVID-19 Local Order

Background

1. Maryland Governor Lawrence J. Hogan declared a state of emergency and catastrophic health emergency on March 5, 2020. The Governor's declaration was renewed on March 17, 2020 to control and prevent the spread of COVID-19 within the State.
2. The Centers for Disease Control (CDC) advises that social distancing is the most effective way of slowing the spread of COVID-19. The serious health risk to County residents continues despite efforts to require social distancing.
3. On March 30, 2020, Governor Hogan issued Executive Order 20-03-30-01 which ordered all non-essential employees in the State to stay at home for an undetermined period to try to slow the spread of the virus.
4. On May 13, 2020, Governor Hogan issued Executive Order 20-05-13-10 which began a slow opening of the State's economy, and gave Maryland Counties the discretion to continue to enforce the Governor's stay at home Order based on a review of local data concerning the spread of COVID-19 in that County.
5. The County's Local Health Officer, Dr. Travis Gayles, has developed criteria to safely lift the stay at home restrictions when appropriate. Dr. Gayles told the Council on May 14 that the County has not yet met all the criteria necessary to begin lifting the stay at home restrictions.
6. The Executive has agreed with other local officials representing other local governments in the Washington Metropolitan Area that a unified continuation of these restrictions is both necessary and appropriate at this time.
7. Continuing the stay at home restrictions in the County currently is consistent with the guidance from the CDC and other public health officials.
8. On May 15, 2020, County Executive Elrich issued the attached Executive Order No. 067-20, COVID-19 Local Order continuing the stay at home restrictions in the County until certain criteria in slowing the spread of the virus are met.

Action

The County Council for Montgomery County Maryland approves the following resolution:

The Council approves Executive Order No. 067-20, COVID-19 Local Order.

This is a correct copy of Council action.

Selena Mendy Singleton, Esq., Clerk of the Council

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MONTGOMERY COUNTY EXECUTIVE ORDER

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

Subject COVID-19 Local Order	Executive Order No. 067-20	Subject Suffix
Department Office of the County Executive	Department No.	Effective Date 5/15/2020

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, to control and prevent the spread of COVID-19 within the state, and the state of emergency and catastrophic health emergency still exists;

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 Centers for Disease Control (CDC) advises that social distancing is the most effective way of slowing the spread of COVID-19;

WHEREAS, COVID-19 continues to pose serious health risk for the citizens of Montgomery County, particularly elderly residents and those who are immunosuppressed or otherwise have high-risk medical conditions;

WHEREAS, on March 30, 2020, the Governor issued Executive Order 20-03-30-01 which ordered all nonessential employees in the State to stay at home for an undetermined period of time in an effort to arrest the increase in the number of residents contracting the virus;

WHEREAS, on May 13, 2020 the Governor issued Executive Order 20-05-13-01 which gave Maryland counties the discretion to review local data and make independent decisions about when it is appropriate to relax certain restrictions;

WHEREAS, Montgomery County does not meet many of the criteria that the Governor outlined in his four building blocks to reopen;

WHEREAS, the County's Local Health Officer has put forth criteria for safely lifting the stay at home order. Lifting the stay at home order and beginning to reopen businesses could be considered when the following criteria have been met:

1. sustained (14 days) decreases (rolling average) in:
 - i. the number of new cases in the setting of increased testing;
 - ii. COVID-19 related hospitalization rate;
 - iii. COVID-19 related ICU rate;
 - iv. COVID-19 related fatalities;
 - v. COVID-19 like and influenza like illnesses presenting to the health care system;



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- vi. percentage of Acute bed usage by COVID-19 related patients;
- vii. percentage of ICU bed usage by COVID-19 related patients;
- viii. 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
- 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, Maryland and other local governments in the region have agreed that the region is not ready at this time to reopen;

WHEREAS, the parameters set out by the Local Health Officer have not all been satisfied; and

WHEREAS, it is necessary and reasonable to issue more restrictive orders than the Governor to save lives and prevent exposure to COVID-19 within Montgomery County;

NOW, THEREFORE, BE IT ORDERED, PURSUANT TO THE AUTHORITY GRANTED IN GOVERNOR HOGAN’S EXECUTIVE ORDER NUMBER 20-05-13-01:

- 1. Montgomery County will not open as authorized in the Executive Order Number 20-05-13-01;
- 2. The following provisions of the Governor’s May 6, 2020 Executive Order (Number 20-05-06-01), as restated immediately below, will remain in effect until further notice in Montgomery County;

II. Stay-at-Home Order.

- a. All persons living in the State of Maryland are hereby ordered, to stay in their homes or places of residences (“Homes”) except:
 - i. to conduct or participate in Essential Activities (defined below) or Permitted Outdoor Activities (defined below);
 - ii. staff and owners of businesses and organizations that are not required to close pursuant to paragraph IV or paragraph V below may travel:
 - 1. between their Homes and those businesses and organizations; and



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- 2. to and from customers for the purpose of delivering goods or performing services; and
- iii. staff and owners of Non-Essential Businesses (defined below) may travel:
 - 1. between their Homes and those Non-Essential Businesses for the purpose of engaging in Minimal Operations; and
 - 2. to and from customers for the purpose of delivering goods.
- b. As used herein, “*Essential Activities*” means:
 - i. Obtaining necessary supplies or services for one’s self, family, household members, pets, or livestock, including, without limitation: groceries, supplies for household consumption or use, supplies and equipment needed to work from home, laundry, and products needed to maintain safety, sanitation, and essential maintenance of the home or residence;
 - ii. Engaging in activities essential for the health and safety of one’s self, family, household members, pets, or livestock, including such things as seeking medical or behavior health or emergency services, and obtaining medication or medical supplies;
 - iii. Caring for a family member, friend, pet, or livestock in another household or location, including, without limitation, transporting a family member, friend, pet, or livestock animal for essential health and safety activities, and to obtain necessary supplies and services;
 - iv. Traveling to and from an educational institution for purposes of receiving meals or instructional materials for distance learning;
 - v. Travel required by a law enforcement officer or court order; or
 - vi. Traveling to and from a federal, State, or local government building for a necessary purpose.
- c. As used herein, “*Permitted Outdoor Activities*” means the following, done in compliance with paragraph III below, applicable Secretary’s Directives, Health Officer Directives, and social distancing guidance published by CDC and MDH:
 - i. Outdoor exercise activities, such as walking, hiking, running, biking, or individual and small group sports such as golfing, tennis, and similar activities;
 - ii. Outdoor fitness instruction;
 - iii. Recreational fishing, hunting, shooting, and archery;
 - iv. Recreational boating;
 - v. Horseback riding; and



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vi. Visiting cemeteries.

III. Gatherings Larger Than 10 Persons Prohibited.

- a. Social, community, spiritual, religious, recreational, leisure, and sporting gatherings and events of more than 10 people (“large gatherings and events”) are hereby prohibited at all locations and venues, including but not limited to parades, festivals, conventions, and fundraisers.
- b. 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.

IV. Closure of Non-Essential Businesses, Generally.

- a. This Order controls the occupancy and use of all businesses, organizations, establishments, and facilities that are not part of the critical infrastructure sectors identified by the U.S. Department of Homeland Security’s Cybersecurity and Infrastructure Security Agency (currently described at <https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19>) (collectively, “NonEssential Businesses”).
- b. Subject to paragraph IV.c, all Non-Essential Businesses shall remain closed to the general public.
- c. Staff and owners may continue to be on-site at Non-Essential Businesses for only the following purposes (“Minimal Operations”):
 - i. Facilitating remote working (a/k/a/ telework) by other staff;
 - ii. Maintaining essential property;
 - iii. Preventing loss of, or damage to property, including without limitation, preventing spoilage of perishable inventory;
 - iv. Performing essential administrative functions, including without limitation, picking up mail and processing payroll;
 - v. Caring for live animals; and
 - vi. In the case of Non-Essential Businesses that are retail establishments, continuing to sell retail products on a delivery basis.
- d. All businesses, organizations, establishments, and facilities that are required to close pursuant to paragraph V, pursuant to any other Order of the Governor of the State of Maryland or any other Order of a political subdivision, shall be and remain closed in accordance with paragraph V or such other Order, as the case may be.



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V. Closure of Certain Specific Businesses, Organizations, and Facilities.

- a. Senior Centers. All senior citizen activities centers (as defined in Section 10501(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 Maryland (“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.”
 - ii. All Restaurants and Bars shall remain closed to the general public, except that, to the extent permitted by applicable law, and in accordance with any social-distancing recommendations of MDH, food and beverages may be:
 1. sold if such food or beverages are promptly taken from the premises, i.e., on a carry-out or drive-through basis; or
 2. delivered to customers off the premises.
- c. Fitness Centers.
 - i. This Order controls the occupancy and use of fitness centers, health clubs, health spas, gyms, aquatic centers, and self-defense schools in Maryland (“Fitness Centers”).
 - ii. All Fitness Centers shall remain closed to the general public, except that the portion of any Fitness Center that is licensed or otherwise permitted by applicable law, regulation, or order to provide child care services may remain open to the general public for the purpose of continuing to provide such child care services.
- d. 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.
- e. Malls.
 - i. This Order controls the occupancy and use of shopping centers in Maryland that have one or more enclosed pedestrian concourses (“Enclosed Malls”).
 - ii. The following portions of Enclosed Malls shall remain closed to the general public:



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1. pedestrian concourses and other interior common areas open to the general public, including without limitation, food courts; and
2. retail establishments only accessible to the general public from enclosed pedestrian concourses or other interior areas.
- iii. This paragraph V.e does not require closure of retail establishments attached to Enclosed Malls that are directly accessible from the outside.
- iv. [Montgomery County approves] access by the general public to the following parts of Enclosed Malls:
 1. retail establishments (a) that primarily sell groceries or pharmacy products, or (b) at which licensed professionals provide health care services; and
 2. pedestrian concourses and other interior common areas, but solely to the extent necessary for the general public to access the retail establishments described in paragraph IV.e.iv.1.
- f. Other Recreational Establishments.
 - i. This Order controls the occupancy and use of the following establishments in Maryland (“Recreational Establishments”):
 1. bingo halls;
 2. bowling alleys;
 3. pool halls;
 4. amusement parks;
 5. roller and ice skating rinks;
 6. miniature golf establishments;
 7. social and fraternal clubs, including without limitation, American Legion posts, VFW posts, and Elks Clubs; and
 8. 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.
 - ii. All Recreational Establishments shall remain closed to the general public (including members, in the case of private clubs).
 - iii. [] notwithstanding anything to the contrary elsewhere in this Order, the following establishments in Maryland may open to the general public, subject to paragraph III above and all applicable Secretary’s Directives and physical distancing guidance published by CDC and MDH:
 1. golf courses and driving ranges;



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- 2. outdoor archery and shooting ranges;
- 3. marinas and watercraft rental businesses; and
- 4. campgrounds.
- g. Other Miscellaneous Establishments.
 - i. This Order controls the occupancy and use of the following establishments in Maryland:
 - 1. tattoo parlors;
 - 2. tanning salons;
 - 3. barber shops; and
 - 4. beauty salons and all other establishments that provide esthetic services, provide hair services, or provide nail services (as described in Title 5, Subtitle 2 of the Business Occupations Article of the Maryland Code).
 - ii. The establishments listed in paragraph V.g.i above shall remain closed to the general public.

VI. Specific Exclusions. For avoidance of doubt:

- a. This Order does not require the closure of, or prohibit the movement of any staff or volunteer traveling to, from, or in connection with their duties at any:
 - i. federal, State, or local government unit, building, or facility;
 - ii. newspaper, television, radio, or other media service; or
 - iii. non-profit organization or facility providing essential services to low income persons, including, without limitation, homeless shelters, food banks, and soup kitchens.
- b. Paragraph II of this Order does not apply to:
 - i. Persons whose homes or residences have become unsafe, such as victims of domestic violence; and
 - ii. Persons who are experiencing homelessness, but governmental and other entities are strongly encouraged to make shelter available for such persons to the maximum extent practicable, in a manner consistent with the social distancing guidelines of the CDC and MDH.

VII. Government Buildings and Facilities with Large Occupancy or Attendance.

- a. State and local government buildings and facilities with an expected occupancy or attendance of more than 10 people shall:
 - i. Promptly and conspicuously post in the building or facility a copy of the MDH recommendations for social distancing; and
 - ii. Provide all occupants and attendees with the capability to wash their hands.



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- b. A copy of this Order shall be made available to all occupants or attendees at any State or local government building and facility with an expected occupancy or attendance of more than 10 people.
- 3. Enforcement of this Local Order shall be done in accordance with the provisions established in the Governor’s May 6, 2020 Executive Order (Number 20-05-06-01).
- 4. This Local Order may be amended, upon consultation with the Local Health Officer and the approval of the Montgomery County Council.
- 5. 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.
- 6. This Local Order shall take effect immediately.

By: 

 MARC ELRICH
 County Executive

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

By: 

 Date: 5/15/2020