



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

AGENDA ITEMS 1 and 2
May 29, 2020
**Introduction/
Public Hearin/Action**

SUBJECT

Resolution to adopt a Board of Health Regulation concerning Executive Order 070-20, Covid-19 Local Order – Phase 1
Resolution to approve Executive Order 070-20, Covid-19 Local Order – Phase 1
Lead Sponsor: County Council

EXPECTED ATTENDEES

None

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- Whether to reduce the stay at home restrictions.

DESCRIPTION/ISSUE

The Board of Health would adopt Montgomery County Executive Order 070-20 as a Board of Health Regulation reducing some of the stay at home restrictions in Executive Order 067-20.

SUMMARY OF KEY DISCUSSION POINTS

- None

This report contains:

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AGENDA ITEMS 1 & 2
May 29, 2020
Introduction/Public Hearing/Action

M E M O R A N D U M

May 28, 2020

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney

SUBJECT: Resolution to adopt a Board of Health Regulation concerning Executive Order 070-20, Covid-19 Local Order – Phase 1

PURPOSE: Introduction/Public Hearing/Action – Council vote required

On Friday, May 29, the Council, sitting as the Board of Health, is scheduled to introduce a Board of Health regulation concerning Executive Order 070-20, Covid-19 Local Order – Phase 1. The Regulation is sponsored by the County Council. A public hearing and action is tentatively scheduled for later the same day. The Council is also scheduled to adopt a Resolution approving Executive Order No. 070-20 sitting as the County Council.

Background

On May 15, 2020, the Council adopted Resolution No. 19-456 approving Executive Order No. 067-20, Covid-19 Local Order. EO 067-20 continued the stay at home order of the Governor for the County until certain criteria in slowing the spread of the Covid-19 virus are met. The County's Local Health Officer, Dr. Travis Gayles, has determined that certain criteria have been met that would permit a Phase 1 reopening. County Executive Elrich signed EO 070-20, Covid-19 Local Order – Phase 1 permitting certain businesses and activities to operate again in the County as of June 1, 2020.

Provisions of the Board of Health Regulation

The Board of Health Regulation would approve EO 070-20, Covid-19 Local Order – Phase 1, which was signed by County Executive Elrich on May 28. The Board of Health Regulation would continue to prohibit gatherings of 10 persons or more, but it would reduce the current restrictions on the operations of drive-in religious services, retail establishments, manufacturing operations, certain personal services, businesses, food service establishments, outdoor recreation, childcare facilities, outdoor day camps, outdoor your sports, car washes, and farms.

Resolution Approving Executive Order 070-20

In addition to adopting a Board of Health Regulation, the Council is scheduled to approve a resolution approving Executive Order 070-20, Covid-19 Local Order – Phase 1 sitting as the County Council.

This packet contains:

	<u>Circle #</u>
Proposed Resolution Approving Executive Order 070-20	1
Proposed Board of Health Regulation	3
Executive Order 070-20, COVID-19 Local Order	5

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Resolution No.: _____
Introduced: May 29, 2020
Adopted: _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY MARYLAND**

Lead Sponsor: County Council

SUBJECT: Approval of Executive Order No. 070-20, 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 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.
4. 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.
5. 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.
6. 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.
7. Montgomery County has demonstrated significant progress and trends towards meeting much of the criteria listed in County Executive Order 067-20.

8. The County's Local Health Officer, Dr. Travis Gayles, has developed criteria to safely lift the stay at home restrictions when appropriate. Dr. Gayles determined that the County has met most of the criteria necessary to begin lifting the stay at home restrictions.
9. Reducing some of the stay at home restrictions in the County is consistent with the guidance from the CDC and other public health officials.
10. On May 28, 2020, County Executive Elrich issued the attached 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.

Action

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

The Council approves Executive Order No. 070-20, COVID-19 Local Order.

This is a correct copy of Council action.

Selena Mendy Singleton, Esq., Clerk of the Council

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Resolution No.: _____
Introduced: May 29, 2020
Adopted: _____

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

Lead Sponsor: County Council

Subject: **Board of Health Regulation approving Executive Order 070-20, COVID-19 Local Order**

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.

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. Montgomery County has demonstrated significant progress and trends towards meeting much of the criteria listed in County Executive Order 067-20.
9. 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 the coronavirus.
10. 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 reduce some restrictions as described in Executive Order 070-20, COVID-19 Local Order

Action

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

Executive Order 070-20, COVID-19 Local Order, attached hereto, is adopted as a Board of Health Regulation for Montgomery County as of June 1, 2020.

This is a correct copy of Council action.

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 1	Executive Order No. 070-20	Subject Suffix
Department Office of the County Executive	Department No.	Effective Date 6/1/2020

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 U.S. Centers for Disease Control and Prevention (“CDC”) and the Maryland Department of Health (“MDH”) recommend social distancing and limitations on the size of large gatherings to reduce the spread of COVID-19;

WHEREAS, 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;

WHEREAS, 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; and

WHEREAS, on May 15, 2020, I 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;

WHEREAS, 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;

WHEREAS, Montgomery County has demonstrated significant progress and trends towards meeting much of the criteria listed in [County Executive Order 067-20](#);



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NOW, THEREFORE, BE IT ORDERED, PURSUANT TO THE AUTHORITY GRANTED IN GOVERNOR HOGAN’S EXECUTIVE ORDER NUMBER 20-05-27-01, MONTGOMERY COUNTY EXECUTIVE ORDER 067-20 IS AMENDED AS FOLLOWS

1. Gatherings Larger Than 10 Persons Prohibited. Social, community, 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. 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.
2. Drive-In Religious Services. Churches, synagogues, mosques, temples, and other similar religious facilities of any faith (“Religious Facility”) may conduct “drive-in” services, where participants gather in their vehicles near the Religious Facility and participate in the service together by remote means, subject to the following requirements, which are intended to protect public health, safety, and welfare:
 - a. participants may leave their homes to travel by vehicle to and from the Religious Facility and must remain in their vehicle at all times;
 - b. no vehicle may contain more than 10 persons, in accordance with paragraph 1;
 - c. participants may not interact physically with clergy, staff, or participants in other vehicles.
3. Retail Establishments. Retail businesses, organizations, establishments, and facilities (Retail Establishments) within Montgomery County are now permitted to offer curbside pickup, provided the following physical precautions are met and followed:
 - a. physical distancing of greater than 6 feet (whenever possible) between employees and customers at curbside and amongst employees during in-store operations;
 - b. use of physical distancing markers for staff and customers;
 - c. all staff are required use of face coverings and other Personal Protective Equipment (“PPE”) appropriate to their workplace;
 - d. all staff are required to wash their hands at a minimum of once per hour;
 - e. high contact surfaces (those with hourly or greater contact frequency) are cleaned with CDC and Environmental Protection Agency (“EPA”) approved disinfectant at least every 2 hours;
 - f. all employees receive ongoing guidance and training to reflect updated CDC guidelines; and
 - g. all customers are required to use face coverings during curbside pickup whenever physical distancing is not possible.



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4. Manufacturing. All manufacturing businesses and facilities in Montgomery County may fully reopen provided the following physical precautions are met and followed:
 - a. physical distancing of greater than 6 feet (whenever possible);
 - b. all staff are required use face coverings and other PPE appropriate to their workplace;
 - c. use of physical distancing markers for staff;
 - d. high contact surfaces (those with hourly or greater contact frequency) are cleaned with CDC and EPA approved disinfectant at least every 2 hours; and
 - e. all employees receive ongoing guidance and training to reflect updated CDC guidelines.
5. Certain Personal Services. Hair Salons and Barbers (“Personal Services Establishments”) may reopen, by appointment only, to provide hair services provided the following physical precautions are met and followed:
 - a. physical distancing greater than 6 feet, wherever possible;
 - b. all staff are required to use face coverings, gloves, and any other PPE appropriate to their workplace;
 - 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;
 - e. use of physical distancing markers for staff and customers;
 - f. all customers required to wear face coverings;
 - g. high contact surfaces (those with hourly or greater contact frequency) are cleaned with CDC and EPA approved disinfectant at least every 2 hours; and
 - h. all employees receive ongoing guidance and training to reflect updated CDC guidelines.
6. 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 outdoor seating areas;
 - ii. continue to sell food and beverages that are promptly taken from the premises, i.e., on a carry-out or drive-through basis; and/or
 - iii. continue to deliver food and beverages to customers off the premises.
 - b. Restaurants and Bars and Social Clubs that serve food and beverages to customers in outdoor areas shall:
 - i. require all staff to wear face coverings;
 - ii. all staff are required to wash their hands at a minimum of once per hour;



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- iii. ensure patrons are seated at least six feet away from each other, except for households seated together;
 - iv. not allow groups larger than six persons to be seated together, except members of the same household;
 - v. not serve food in a buffet format;
 - vi. clean high contact surfaces (those with hourly or greater contact frequency) with CDC and EPA approved disinfectant at least every 2 hours; and
 - vii. clean each table between each seating with CDC and EPA approved disinfectants.
7. Outdoor Recreation. The following establishments in Montgomery County may remain open to the general public subject to all applicable directives and orders issued by the Secretary of the MDH and physical distance guidance published by CDC and MDH:
- a. golf courses and driving ranges;
 - b. outdoor archery and shooting ranges;
 - c. marinas and watercraft rental businesses;
 - d. campgrounds; and
 - e. horse boarding and riding facilities.
8. Childcare. Childcare providers may reopen for the purpose of providing childcare for the dependents of essential employees and Phase I opening employees with the following physical precautions:
- a. physical distancing greater than 6 feet, wherever possible;
 - b. all staff are required to use face coverings and gloves, and any other PPE appropriate to their workplace;
 - c. all children over the age of two should wear face coverings;
 - d. high contact surfaces (those with hourly or greater contact frequency) will be cleaned with CDC and EPA approved disinfectant at least every 2 hours; and
 - e. all employees receive ongoing guidance and training to reflect updated CDC guidelines for their workplace.
9. Outdoor Day Camps. Outdoor day camps in Montgomery County may reopen as of 6:00 a.m., June 1, 2020, subject the Maryland Department of Health's ("MDH") [Directive and Order Regarding Youth Camp Programs](#) (No. MDH 2020-05-27-02).
- a. Outdoor day camps that provide outdoor youth sports must comply with [MDH's Interim Guidance for Limited Outdoor Youth Sports](#) dated May 27, 2020, and any subsequent amendments thereto. Failure to comply with the guidance may result in camp closure.
10. 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](#)



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[Guidance for Limited Outdoor Youth Sports](#) dated May 27, 2020, and any subsequent amendments thereto. Failure to comply with the guidance may result in camp closure.

11. Other Businesses That May Reopen.

- a. Car washes. Car washes may reopen solely for the purpose of cleaning the exterior of vehicles with the following physical precautions:
 - i. physical distancing of greater than 6 feet (whenever possible);
 - ii. all staff are required use face coverings and other PPE appropriate to their workplace;
 - iii. use of physical distancing markers for staff;
 - iv. high contact surfaces (those with hourly or greater contact frequency) are cleaned with CDC and EPA approved disinfectant at least every 2 hours; and
 - v. all employees receive ongoing guidance and training to reflect updated CDC guidelines.
- b. Fully automated car washes. Fully automated car washes may resume 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 permit “pick-your-own” produce picking by members of the public so long as they comply with [State Executive Order 20-04-15-01](#), dated April 15, 2020, entitled Requiring Use of Face Coverings Under Certain Circumstances and Requiring Implementation of Certain Physical Distancing Measures, (“Face Coverings Order”) as it may be amended from time to time.

12. 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.”
 - ii. Except as permitted by paragraph 5.a, all Restaurants and Bars shall remain closed to the general public.
- c. Fitness Centers.



MONTGOMERY COUNTY EXECUTIVE ORDER

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- i. This Order controls the occupancy and use of fitness centers, health clubs, health spas, gyms, aquatic centers, and self-defense schools in Montgomery County (“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:
 - (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. Paragraph 11.e does not require closure of establishments attached to Enclosed Malls that are directly accessible from the outside.
 - iv. Notwithstanding paragraph 12.e.ii, 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 12.e.iv(1).
- f. 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;
 - iii. pool halls;
 - iv. amusement parks;
 - v. roller and ice skating rinks;
 - vi. miniature golf establishments;
 - vii. Social Clubs; and



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- viii. 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
- g. 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 or provide nail technician services (as described in Title 5 of the Business Occupations Article of the Maryland Code).
 - ii. The term “massage parlors” in paragraph 12.g.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.

13. Operating Requirements.

- a. All businesses, organizations, establishments, and facilities that are permitted to be open under this Order shall comply with:
 - i. applicable Directives issued by the Secretary of MDH;
 - ii. applicable social distancing guidance published by CDC and MDH;
 - iii. any other applicable guidance published by MDH
- b. For avoidance of doubt, Retail Establishments shall continue to comply with the [Face Coverings Order](#) as it may be amended from time to time.
- c. Any business, organization, establishment, or facility in the Montgomery County may require customers and visitors over the age of two, and/or staff to wear face coverings (as defined in the [Face Coverings Order](#)). Businesses, organizations, establishments, or facilities that elect to do so shall post signage at each entrance advising customers, visitors, and/or staff about such requirements.
- d. All business, organizations, establishments, and facilities that are permitted to open shall post signage indicating that they are in compliance with this Executive Order.

14. I hereby adopt by reference the following portions of [State Executive Order 20-05-27-01](#)

- a. Paragraph IV.h (“Other Non-Essential Businesses”);
- b. Paragraph V (“Specific Exclusions”) and all of its subparagraphs;
- c. Paragraph VI (“Government Buildings and Facilities with Large Occupancy or Attendance”) and all of its subparagraphs; and
- d. Paragraph VII (“General Provisions”) and all of its subparagraphs.

15. Enforcement of this Local Order shall be done in accordance with the provisions established in [State Executive Order 20-05-27-01](#).



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16. This Local Order may be amended, upon consultation with the Local Health Officer and the approval of the Montgomery County Council.
17. 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.
18. This Local Order shall take effect June 1, 2020 at 6:00 a.m.

By: 
MARC ELRICH
County Executive

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

By: 
Silvia C. Kinch, Division Chief

Date: 05/28/2020