



Committee: Direct to Council
Committee Review: N/A
Staff: Christine Wellons, Legislative Attorney
Purpose: To receive testimony/final action - vote expected
Keywords: #COVID19PublicHealthOrder

AGENDA ITEMS #1A and 1B
August 5, 2021
**Introduction/Public
Hearing/Action**

SUBJECT

Resolution to adopt a Board of Health Regulation to prevent the spread of COVID-19 in the County.
Lead Sponsor: Council President at the Request of the County Executive

EXPECTED ATTENDEES

Dr. Travis Gayles, County Health Officer
Dr. Earl Stoddard, Assistant Chief Administrative Officer
Silvia Kinch, County Attorney’s Office

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- Whether to reinstitute a masking requirement indoors *if* the level of COVID-19 transmission in the County reaches “substantial,” as defined by the CDC.

DESCRIPTION/ISSUE

- The Board of Health Regulation, if adopted, generally would require residents to wear face coverings in indoor areas open to the public if the County becomes an area of “substantial” transmission of COVID-19. According to the CDC, the County would be deemed an area of substantial transmission if the County reaches 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.
- If the County becomes an area of substantial transmission, the Health Officer would be required to notify the Council, the County Executive, and the public that the indoor mask requirement has been triggered.

This report contains:

Staff Report
Proposed Board of Health Regulation

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MEMORANDUM

August 2, 2021

TO: County Council

FROM: Christine Wellons, Legislative Attorney

SUBJECT: Resolution to adopt a Board of Health Regulation to prevent the spread of COVID-19 in the County

PURPOSE: Introduction/Public Hearing/Action – Council roll call vote expected

The Council, sitting as the Board of Health, is tentatively scheduled on August 5, 2021 to hold a public hearing and act on a Board of Health Regulation to Prevent the Spread of COVID-19 in the County. The resolution is being introduced on August 5 by the Council President at the request of the County Executive.

Background

Maryland Governor Hogan declared a state of emergency and catastrophic health emergency on March 5, 2020, and renewed it on March 17, 2020, April 10, 2020, May 6, 2020, June 3, 2020, July 1, 2020, July 30, 2020, August 10, 2020, September 8, 2020, October 6, 2020, October 29, 2020, November 25, 2020, December 23, 2020, January 21, 2021, February 19, 2021, March 18, 2021, April 16, 2021, May 14, 2021, June 12, 2021, and July 12, 2021 to control and prevent the spread of SARS-CoV-2, also known as COVID-19 within the state, and both the state of emergency and catastrophic health emergency still exist in Maryland.

The Council, sitting as the Board of Health, has authority to issue a public health regulation to limit the spread of COVID-19 in the County. Md. Health-General Code Ann. § 3-202(d) provides:

- (d) Nuisances; disease.** -- In addition to the other powers provided by law and subject to the provisions of this article, each county board of health may adopt and enforce rules and regulations on any nuisance or cause of disease in the county.

Md. Local Government Code Ann. § 10-328 provides the County with the following additional authority:

- (a) **In general.** -- A county may provide for the prevention, abatement, and removal of nuisances.
- (b) **Contagious diseases.** -- A county may provide for the prevention of contagious diseases in the county.
- (c) **Regulation of offensive trades.** -- A county may regulate any place where offensive trades are conducted or that may involve or give rise to unsanitary conditions or conditions detrimental to health.
- (d) **Construction.** -- This title does not affect:
 - (1) any power or duty of the Secretary of Health or the Secretary of the Environment; or
 - (2) any public general law relating to health.

Based on this authority, the Council, sitting as the Board of Health, adopted a series of resolutions to prevent the spread of COVID-19 in the County. The last of those resolutions, Resolution 19-842, terminated on May 28, 2021, when 50% of the County’s population became fully vaccinated.

Although Montgomery County has been successful in vaccinating residents and stemming the spread of COVID-19, in recent weeks the highly contagious Delta variant has increased the need for additional preventative measures. On July 27, 2021, the CDC, citing new data on the Delta variant, recommended that persons residing in areas of substantial or high transmission of COVID-19 return to wearing masks indoors, [When You’ve Been Fully Vaccinated | CDC](#). Montgomery County currently is an area of moderate transmission, but pursuant to the CDC’s forecasting will likely cross the threshold into substantial transmission within the next few weeks.

Specifics of the Proposed Resolution

Consistent with the new CDC guidance, the resolution would adopt a Board of Health regulation requiring face coverings in public indoor areas if and when the County reaches a status of “substantial” COVID-19 transmission (meaning that there are 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 CDC classifies transmission values as low, moderate, substantial, or high, [Guidance for Implementing COVID-19 Prevention Strategies in the Context of Varying Community Transmission Levels and Vaccination Coverage | MMWR \(cdc.gov\)](#).

The following table, which is available at [Guidance for Implementing COVID-19 Prevention Strategies in the Context of Varying Community Transmission Levels and Vaccination Coverage | MMWR \(cdc.gov\)](#), reflects the CDC’s categorizations:

Indicator	Transmission level			
	Low	Moderate	Substantial	High
New cases per 100,000 persons in the past 7 days	0–9.99	10.00–49.99	50.00–99.99	≥100.00
Percentage of positive nucleic acid amplification tests in the past 7 days	<5.00	5.00–7.99	8.00–9.99	≥10.00

Once the transmission level in the County reaches “substantial” under this CDC framework, the Health Officer would alert the public that the indoor mask mandate was in effect. Persons in indoor areas accessible to the public would be required to wear face coverings. However, face coverings would not be required in certain enumerated circumstances, including:

- if, due to a bona fide disability or medical condition, it would be unsafe for the person to do so;
- the extent wearing a Face Covering would impede communication by or with persons who have a hearing impairment or other disability, where the ability to see the mouth is essential for communication;
- if wearing a Face Covering would subject the person to an unsafe working condition, as determined by federal, state, or local occupational safety regulators or workplace safety guidelines;
- to the extent wearing a Face Covering would make it impossible to receive services requiring access to the face, mouth, or head, including without limitation, dental care, shaving, and facial treatments;
- while consuming food or beverages;
- while swimming or engaging in other physical activities where the use of a Face Covering is likely to pose a bona fide safety risk;
- while operating any Public Transportation conveyance, provided that the person is:
 - the sole operator of the conveyance, and
 - located in a separate compartment that is off-limits to riders; or
- to the extent it is necessary to observe the person’s entire face to verify such person’s identity for bona fide security purposes.

Under the regulation, the Health Officer will be responsible for notifying the Council and the public when the “substantial” transmission occurs and, thus, when the mask requirement is triggered. The notification:

- must include the date and time that the mask mandate takes effect;

- must be posted on the County website and distributed through a press release; and
- must be sent, via email distribution, to the governing body or chief executive officer of each municipality in the County.

The regulation would apply countywide and would take effect on August 6, 2021 at 12:01 a.m.

This packet contains:
Proposed Board of Health Regulation

Circle #
1

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Resolution No.: _____

Introduced: _____

Adopted: _____

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

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

SUBJECT: Board of Health Regulation to prevent the spread of COVID-19 in the County

Background

1. Lawrence J. Hogan, the Governor of the State of Maryland declared a state of emergency and catastrophic health emergency on March 5, 2020, both of which were renewed on March 17, 2020, April 10, 2020, May 6, 2020, June 3, 2020, July 1, 2020, July 31, 2020, August 10, 2020, September 8, 2020, October 6, 2020, October 29, 2020, November 25, 2020, December 23, 2020, January 21, 2021, February 19, 2021, March 18, 2021, April 16, 2021, May 16, 2021, June 12, 2021, and on July 12, 2021 to control and prevent the spread of SARS-CoV-2, a contagious disease, also known as COVID-19 within Maryland.
2. The effects of COVID-19 require that local officials remain vigilant in advising all individuals in Montgomery County, Maryland of measures they can take to protect their health, safety, and welfare.
3. There are multiple known and emerging COVID-19 variants, some of which spread more quickly in people; cause milder or more severe disease in people; evade detection by specific diagnostic tests; decrease susceptibility to therapeutic agents such as monoclonal antibodies; and further delay or possibly evade natural or vaccine induced immunity.
4. In Montgomery County the predominant COVID-19 variant is the highly contagious Delta variant.
5. On July 27, 2021 the CDC, citing new data on the Delta variant, recommended that persons residing in areas of substantial or high transmission of COVID-19 return to wearing masks indoors.
6. Montgomery County is an area of moderate transmission, but pursuant to the CDC’s forecasting will likely cross the threshold into substantial transmission within the next few weeks.
7. To reduce the threat to human health caused by transmission of COVID-19 and to protect and save lives, it is necessary and reasonable that individuals in Montgomery County reinstate the mandatory use of face coverings indoors if and when the County crosses the threshold into substantial transmission of COVID-19.

8. The Montgomery County Executive, Marc Elrich, and the Montgomery County Health Officer, Dr. Travis Gayles, recommend that face coverings be required in the event that Montgomery County's transmission status increases to substantial transmission.
9. Pursuant to Md. Code Ann. Local Government §10-328(b) a county may provide for the prevention of contagious diseases in the county.
10. 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.
11. Pursuant to Montgomery County Code 2-65, the Montgomery County Council is and may act as the County Board of Health.
12. 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.
13. The County Council, sitting as the Board of Health, finds after hearing the testimony and other evidence in the record of the public hearing that this public health regulation is necessary to protect the health of County residents.

Action

The County Council for Montgomery County, Maryland, sitting as the County Board of Health, finds that this is an emergency and approves the following regulation:

1 **1. Definitions.**

- 2 a. *Face covering* means a covering that fully covers a person's nose, mouth,
3 and chin and is secured to the person's head, including cloth face coverings,
4 scarves, and bandanas. It does not include face covering with a valve; or
5 solely wearing a face shield.
- 6 b. *Public transportation* means shared-ride surface transportation services that
7 are open to the general public, including without limitation, taxi services,
8 ride-sharing services, car services, and transit services operating within
9 Montgomery County. Examples of *public transportation* include Ride-On
10 bus service, WMATA bus and train service, MARC train service, and
11 Mobility and Paratransit services.
- 12 c. *Substantial transmission* means 50-99.99 total new cases per 100,000
13 persons in the past 7 days or 8-9.99% test positivity during the past 7 days.

14 **2. Face Coverings.**

- 15 a. *Requirement to Wear Face Coverings.* Upon notice by the Health Officer
16 under Paragraph 3 that the County has become an area of substantial
17 transmission, and without further action by the Board of Health:
- 18 i. All persons in the County over the age of two (2) years old must
19 wear face coverings indoors at any location accessible to the public.
- 20 b. *Exceptions.* Paragraph 2.a. does not require persons to wear Face
21 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
25 communication by or with persons who have a hearing impairment
26 or other 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
39 that 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 or

43 viii. to the extent it is necessary to observe the person’s entire face to
44 verify such person’s identity for bona fide security purposes.

45 **3. Notice.**

46 a. The Health Officer or his designee promptly must notify the County
47 Council Sitting as the Board of Health, and the County Executive, of any
48 change in the County’s transmission status.

49 b. The Health Officer or his designee promptly must take reasonable steps to
50 notify the public if the County has become an area of substantial
51 transmission. The notification:

52 i. must include the date and time that the mask mandate under
53 Paragraph 2.a. takes effect pursuant to this Regulation;

54 ii. must be posted on the County website and distributed through a
55 press release; and

56 iii. must be sent, via email distribution list, to the governing body or
57 chief executive officer of each municipality in the County.

58 **4. Enforcement.** This Order must be enforced by any County department or agency
59 that has authority over the subject matter of any particular provision and the
60 Montgomery County Police Department.

61 **5. Applicability.** This regulation applies Countywide.

62 **6. Severability.** If the application of this regulation or any part of it to any facts or
63 circumstances is held invalid, the rest of the regulation and its application to all
64 other facts and circumstances is intended to remain in effect.

65 7. **Effective Date.** This regulation takes effect on August 6, 2021 at 12:01 a.m.