



Committee: Directly to Council
Committee Review: N/A
Staff: Christine Wellons, Legislative Attorney
Purpose: Final action – vote expected

AGENDA ITEMS #4.5, #7.5,
and #7.6
November 2, 2021
Action

SUBJECT

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

Lead Sponsor: County Council

EXPECTED ATTENDEES

Dr. James C. Bridgers, Jr., Acting Health Officer

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

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

DESCRIPTION/ISSUE

The resolution would approve an amended Board of Health regulation to prevent the spread of COVID-19, and indoor mask guidance in Montgomery County. Specifically, the resolution would amend the existing indoor masking requirements that apply in publicly accessible areas of the County.

Under the current Board of Health regulation, adopted under Resolution No. 19-975 on August 5, 2021, the Health Officer is required to instate an indoor masking requirement for public places whenever the County reaches a status of substantial transmission of COVID-19 (as determined by Centers for Disease Control metrics).

Under the amended regulation, the County would have to be in a status of substantial transmission for 7 consecutive days before the indoor masking requirement for public places would be triggered. Regarding the substantial transmission status that began on October 30, 2021, the indoor masking requirement would be triggered only if the status continues, without interruption, through November 5, 2021.

This report contains:

Staff report
Resolution

Page 1
©1

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MEMORANDUM

October 31, 2021

TO: County Council

FROM: Christine Wellons, Legislative Attorney

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

PURPOSE: Introduction / Public Hearing / Action – vote expected

Expected Attendees

Dr. James C. Bridgers, Jr., Acting Health Officer

The resolution would approve an amended Board of Health regulation to prevent the spread of COVID-19, and to provide mask guidance, in the County. Specifically, the resolution would amend the existing indoor masking requirements that apply in publicly accessible areas of the County.

Under the current Board of Health regulation, adopted under Resolution No. 19-975 on August 5, 2021, the Health Officer is required to instate an indoor masking requirement for public places whenever the County reaches a status of substantial transmission of COVID-19 (as determined using Centers for Disease Control and Prevention metrics).

Under the amended regulation, the County would have to be in a status of substantial transmission for 7 consecutive days before the indoor masking requirement for public places would be triggered. Regarding the substantial transmission status that began on October 30, 2021, the indoor masking requirement would be triggered only if the substantial transmission status continues, without interruption, through November 5, 2021.

BACKGROUND

On July 27, 2021 the Centers for Disease Control and Prevention (CDC), citing new data on the highly contagious Delta variant, recommended that persons residing in areas of substantial or high transmission of COVID-19 return to wearing masks in indoor public spaces. Montgomery County was an area of substantial transmission as of August 5, 2021, and an area of high transmission as of September 1, 2021. On October 21, 2021, the County improved to a status of moderate transmission. Only a few days later, on October 30, 2021, the County reentered a status of substantial transmission.

Under the Board of Health Regulation adopted on August 5, 2021, through Resolution No. 19-975, an indoor mask requirement for public areas within the County was triggered, effective August 7, 2021, following a notification by the Health Officer to the public that the County had entered a status of substantial transmission. On October 28, 2021, the indoor mask requirement was terminated under the regulation, following the Acting Health Officer's notification to the public that the County had returned to a status of moderate transmission for 7 consecutive days.

On October 30, 2021, only two days after the mask requirement was lifted, the County reentered a status of substantial transmission, and the Acting Health Officer notified the public that – subject to any action to the contrary taken by the Board of Health – the indoor mask requirement for public spaces would be reinstated effective November 3, 2021 at 12:01 a.m.

SPECIFICS OF THE RESOLUTION

The resolution would amend the Board of Health regulation regarding the indoor mask requirement for public places within the County. Under the amended regulation, the County would have to be in a status of substantial transmission of COVID-19 for 7 consecutive days in order for the indoor mask requirement to be reinstated.

In particular, the amended regulation would nullify the Acting Health Officer's notice, provided on October 30, 2021, that would have reinstated the indoor mask requirement as of 12:01 a.m. on November 3, 2021. Instead, the Acting Health Officer would begin calculating, with October 30 being "day 1", whether the County reaches 7 consecutive days of substantial transmission. If the County remains continuously in substantial transmission until the end of November 5, 2021, then the Acting Health Officer would notify the public that the indoor mask requirement will be reinstated for public areas.

NEXT STEP: Vote expected on whether to adopt the Resolution to approve an Amended Board of Health Regulation to prevent the spread of COVID-19, and indoor mask guidance in Montgomery County

This packet contains:
Resolution

Circle #
1

Resolution No.: _____
Introduced: _____
Adopted: _____

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

Lead Sponsor: County Council

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

Background

1. Lawrence J. Hogan, the Governor of the State of Maryland declared a state of emergency and catastrophic health emergency, on March 5, 2020, to control and prevent the spread of SARS-CoV-2, a contagious disease, also known as COVID-19, within Maryland. The Governor’s declaration expired on August 15, 2021.
2. On July 27, 2021 the U.S. Centers for Disease Control and Prevention (CDC), citing new data regarding the highly contagious Delta variant, recommended that persons residing in areas of substantial or high transmission of COVID-19 return to wearing masks in indoor public spaces.
3. Montgomery County was an area of substantial transmission as of August 5, 2021, and an area of high transmission as of September 1, 2021. On October 21, 2021, the County improved to a status of moderate transmission. Only a few days later, on October 30, 2021, the County reentered a status of substantial transmission.
4. Under the Board of Health Regulation adopted on August 5, 2021, through Resolution No. 19-975, an indoor mask requirement for public spaces within the County was triggered, effective August 7, 2021, following a notification by the Health Officer to the public that the County had entered a status of substantial transmission. On October 28, 2021, the indoor mask requirement was terminated under the regulation, following the Acting Health Officer’s notification to the public that the County had returned to a status of moderate transmission for 7 consecutive days.
5. On October 30, 2021, only two days after the mask requirement was lifted, the County reentered a status of substantial transmission, and the Acting Health Officer notified the public that – subject to any action to the contrary taken by the Board of Health – the mask requirement would be reinstated effective November 3, 2021 at 12:01 a.m.
6. The quickly fluctuating transmission levels, and accompanying fluctuations in the indoor mask requirement for public spaces, have caused uncertainty and confusion among members of the public. The uncertainty and confusion are not conducive to the public health. Moreover, only one day of substantial transmission is not sufficient to justify

altering the indoor mask requirement from a public health perspective.

7. After consultation with the Acting Health Officer, the Board of Health finds that 7 consecutive days of substantial transmission would be a reasonable and appropriate metric to trigger a reinstatement of the indoor mask requirement in public spaces. This metric would be in the best interests of the public health.
8. Therefore, the indoor mask requirement for public spaces will not be reinstated unless and until the County has been in a status of substantial transmission for 7 consecutive days.
9. The lengthened time period – to 7 consecutive days for substantial transmission – not only will reduce uncertainty for the public, but it also will provide a more accurate picture of trends in the County’s public health situation. The public health situation in the County has been aided tremendously by high vaccination rates among eligible County residents, and will be aided further by the expected widespread vaccination of newly eligible 5-to-11-year old children.
10. Pursuant to Md. Code Ann. Local Government §10-328(b) a county may provide for the prevention of contagious diseases in the county.
11. 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.
12. Pursuant to Montgomery County Code 2-65, the Montgomery County Council is and may act as the County Board of Health.
13. Rule 4(d) of the Council’s Rules of Procedure provides that before the Board of Health adopts a regulation, the Council President must advertise a public hearing in a newspaper circulated throughout the County at least 15 days before the hearing and notify the governing body or chief executive officer of each municipality in the County at least 15 days before the hearing. Rule 4(d) allows the President to waive these notice provisions if a public health emergency requires immediate action. The Council President has waived these notice requirements because of the public health emergency caused by COVID-19.
14. The County Council, sitting as the Board of Health, finds after hearing the testimony and other evidence in the record of the public hearing that this amended public health regulation is necessary to protect the health of County residents.

Action

The County Council for Montgomery County, Maryland, sitting as the County Board of Health, finds that an emergency exists and approves the following amendments to the Board of Health regulation adopted on August 5, 2021 under Resolution No. 19-975:

1 **1. Definitions.**

- 2 a. *County employee* means an individual employed by the County, regardless
3 of the individual's merit system status or representation by an employee
4 organization.
- 5 b. *COVID-19 test* means a diagnostic test authorized by the Food and Drug
6 Administration to detect whether an Individual has a SARS-CoV-2
7 infection.
- 8 c. *Face covering* means a covering that fully covers a person's nose, mouth,
9 and chin and is secured to the person's head, including cloth face coverings,
10 scarves, and bandanas. It does not include face covering with a valve; or
11 solely wearing a face shield.
- 12 d. *Moderate transmission* means 10-49.99 total new cases per 100,000
13 persons in the past 7 days or 5-7.99% test positivity during the past 7 days.
- 14 e. *Public transportation* means shared-ride surface transportation services that
15 are open to the general public, including without limitation, taxi services,
16 ride-sharing services, car services, and transit services operating within
17 Montgomery County. Examples of *public transportation* include Ride-On
18 bus service, WMATA bus and train service, MARC train service, and
19 Mobility and Paratransit services.
- 20 f. *Substantial transmission* means 50-99.99 total new cases per 100,000
21 persons in the past 7 days or 8-9.99% test positivity during the past 7 days.

22 **2. Face Coverings.**

- 23 a. *Requirement to Wear Face Coverings.* Upon notice by the Health Officer
24 or his designee under paragraph 3. that the County has [become] been an
25 area of substantial transmission for 7 consecutive days, and without further
26 action by the Board of Health:
- 27 i. All persons in the County over the age of two (2) years old must
28 wear face coverings indoors at any location accessible to the public.
- 29 b. *Exceptions.* Paragraph 2.a. does not require persons to wear face coverings:
- 30 i. if, due to a bona fide disability or medical condition, it would be
31 unsafe for the person to do so;
- 32 ii. to the extent wearing a face covering would impede communication

- 33 by or with persons who have a hearing impairment or other
34 disability, where the ability to see the mouth is essential for
35 communication;
- 36 iii. if wearing a face covering would subject the person to an unsafe
37 working condition, as determined by federal, state, or local
38 occupational safety regulators or workplace safety guidelines;
- 39 iv. to the extent wearing a face covering would make it impossible to
40 receive services requiring access to the face, mouth, or head,
41 including without limitation, dental care, shaving, and facial
42 treatments;
- 43 v. while consuming food or beverages;
- 44 vi. while swimming or engaging in other physical activities where the
45 use of a Face Covering is likely to pose a bona fide safety risk;
- 46 vii. while operating any public transportation conveyance, provided that
47 the person is:
- 48 (1) the sole operator of the conveyance, and
49 (2) located in a separate compartment that is off-limits to riders;
- 50 viii. to the extent it is necessary to observe the person's entire face to
51 verify such person's identity for bona fide security purposes;
- 52 ix. when a person is giving a speech or performing for broadcast or an
53 audience, if no one in a location accessible to the public is within six
54 feet of the speaker; or
- 55 x. pursuant to a Letter of Approval by the Health Officer or his
56 designee under paragraph 4 of this [resolution] regulation.
- 57 c. The requirement to wear face coverings under subparagraph a. terminates,
58 without further action by the Board of Health, when the County returns to a
59 status of moderate transmission for 7 consecutive days.

60 **3. Notice.**

- 61 a. The Health Officer or his designee promptly must notify the County
62 Council Sitting as the Board of Health, and the County Executive, of any
63 change in the County's transmission status. At least once daily, the Health
64 Officer or his designee must update the County website with the County's

65 current community transmission status, including information on the total
66 new cases per 100,000 persons in the past 7 days and the test positivity
67 percentage during the past 7 days.

68 b. The Health Officer or [his] the Health Officer's designee promptly must
69 take reasonable steps to notify the public if the County has become an area
70 of substantial transmission for 7 consecutive days. The notification:

71 i. must include the date and time that the [mask] face covering
72 mandate under paragraph 2.a. takes effect pursuant to this
73 regulation;

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

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

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

79 a. If a person, organization, or venue is unclear about the application of this
80 regulation to their business, event, or activity, or seeks a modification to the
81 face covering requirement under paragraph 2.a. consistent with CDC
82 guidelines, they may seek a Letter of Approval from the Health Officer or
83 [his] the Health Officer's designee.

84 b. Requests for a Letter of Approval must be submitted a minimum of 5
85 business days before a scheduled event or activity for which a Letter of
86 Approval is required. Failure to submit a timely request will result in an
87 automatic denial of the Letter of Approval.

88 c. Failure to obtain a required Letter of Approval prior to proceeding with an
89 event or activity will be considered to be a violation of this regulation and
90 could subject the requestor, organization, or venue to the appropriate fines
91 and sanctions.

92 d. Any person, organization, or venue that is found to have held an
93 unauthorized event or activity without a Letter of Approval will be
94 automatically disqualified from receiving a future Letter of Approval.

95 e. A Letter of Approval may be issued by the Health Officer or [his] the Health
96 Officer's designee only to the extent that the conditions of approval in the

97 Letter are consistent with CDC guidelines in place at the time the Letter is
98 issued.

99 **5. County employees – COVID-19 prevention requirements.**

100 a. On or before August 20, 2021, the County Executive must report to the
101 Board of Health regarding:

102 i. an implementation plan and schedule to require each County
103 employee who reports to work at a County facility to:

104 A. provide to the County, on a weekly basis, proof of a negative
105 COVID-19 test; or

106 B. attest to the County that the employee is fully vaccinated
107 against COVID-19; and

108 ii. a method by which aggregate data on County employee vaccination
109 and County employee COVID-19 testing will be made available to
110 the public.

111 b. On or before August 31, 2021, and weekly thereafter, the County Executive
112 must report to the Board of Health, and must make available to the public,
113 aggregate data on County employee vaccination and County employee
114 COVID-19 testing.

115 **6. Enforcement.** This Order must be enforced by any County department or agency
116 that has authority over the subject matter of any particular provision and the
117 Montgomery County Police Department.

118 **7. Applicability.** This regulation applies Countywide.

119 **8. Severability.** If the application of this regulation or any part of it to any facts or
120 circumstances is held invalid, the rest of the regulation and its application to all
121 other facts and circumstances is intended to remain in effect.

122 **9. Effective Date.** This regulation [takes] took effect on August 7, 2021 at 12:00 a.m.,
123 and the amendments to the regulation adopted on November 2, 2021 must take
124 effect immediately upon their adoption by the Board of Health.

125 **10. Calculation of time; transition.**

126 a. For purposes of this regulation, the Health Officer must
127 begin counting a period of 7 consecutive days on the day that the
128 transmission status of the County changes according to the CDC.

- 129 b. For the period of substantial transmission that began on October 30, 2021,
130 the Health Officer must count October 30, 2021 as “day 1” in the Health
131 Officer’s calculation of 7 consecutive days of substantial transmission. If
132 the County remains in a status of substantial transmission from October
133 30, 2021 through the end of November 5, 2021, then the Health Officer
134 must provide notice under paragraph 3.b.

- 135 c. The notice to the public issued by the Acting Health Officer on October
136 30, 2021, which would have reinstated the indoor face covering
137 requirement as of November 3, 2021 at 12:01 a.m., must be deemed null
138 and void.