



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

AGENDA ITEMS B & C
 January 4, 2022
**Introduction/
 Public Hearing/Action**

SUBJECT

Resolution to approve a First 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
- Dr. Earl Stoddard, Assistant Chief Administrative Officer
- Dr. Raymond Crowell, HHS Director

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

Introduction, Public Hearing, and Action on a Resolution to approve a First 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. The resolution would:

1. rescind the automatic termination of the current indoor mask mandate scheduled to occur upon reaching 85% of the total County population becoming fully vaccinated;
2. remove the requirement to end the indoor mask mandate when the County moves into moderate transmission for 7 consecutive days;
3. continue the indoor mask mandate until the Board of Health formally rescinds or amends it;
4. require the Board of Health to meet every 2 weeks to review data on community transmission and consider whether the indoor mask mandate should continue; and
5. eliminate the outdated language requiring the Executive to provide status updates on the County employee vaccination mandate.

This report contains:

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MEMORANDUM

December 30, 2021

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney

SUBJECT: Resolution to approve a First 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
Dr. Earl Stoddard, Assistant Chief Administrative Officer
Dr. Raymond Crowell, HHS Director

The Council, sitting as the Board of Health, is scheduled to introduce, hold a public hearing, and act on a First 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.

Background

Under the current Board of Health regulation, adopted under Resolution No. 19-1043 on November 2, 2021, the Health Officer is required to reinstate an indoor masking requirement for public places whenever the County reaches a status of substantial transmission of COVID-19 for 7 consecutive days (as determined using Centers for Disease Control and Prevention metrics).

The November 2 Regulation requires face coverings to be worn indoors in public areas of the County with some exceptions during a period of substantial or high transmission. Substantial transmission means 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 Order also terminates without further action when 85% of the total County population is fully vaccinated. We estimate that the County will reach the 85% threshold on or before January 4.

Unfortunately, the Omicron variant has pushed the County into an extended period of high transmission. High transmission means 100 or more total cases per 100,000 population in the past 7 days or a 10.0% or greater test positivity in the past 7 days. **As of December 28, the County has experienced 649.5 new cases per 100,000 persons in the past 7 days.** Consequently, the

Health Officer requested the Board of Health to rescind the automatic termination of the indoor mask mandate at its meeting on January 4.

Mask Mandates in the D.C. Metropolitan Region

The County is not alone in ordering people to wear a face covering in publicly accessible indoor venues due to the extremely transmissible Omicron variant becoming the dominant strain of the COVID-19 virus in the nation.

- **Washington, DC:** Masks required in all indoor public spaces until at least Jan. 31, 2022, at 6 a.m., issued on Dec. 20, 2021, by [Mayors Order 2021-147](#)
- **Prince George’s County:** Face covering required in all indoor public spaces until Jan. 23, 2022, at 5:00 p.m.; issued on Nov. 29, 2021 by [Resolution CR-137-2021](#)
- **Baltimore County:** Masks required in all indoor public spaces until Jan. 31, 2022, by a [public health order](#) issued on Dec. 27, effective on Dec. 29, in conjunction with the state of emergency declared by [Executive Order 2021-028](#).
- **Howard County:** Masks required in all indoor public spaces, issued on Dec. 23 and effective Dec. 26, 2021, through [Executive Order 2021-17](#).
- **In Virginia – including [Fairfax County](#), [Arlington County](#) and the [City of Alexandria](#):** Indoor masking is currently [recommended for everyone](#).
- The Virginia Department of Health and County Health Departments are indicating that, “Everyone age 2 and up should wear a mask in indoor public spaces. Virginia communities currently have high levels of COVID-19 transmission.”
- **Metro / WMATA:** The TSA has extended the [COVID-19 public transportation mask mandate](#) through March 18, 2022.
- In the DC Metro Area, [the requirement to wear face masks](#) applies in all Metro stations, trains, buses and MetroAccess vehicles.

Statutory Authority

Pursuant to Md. Code Ann. Local Government §10-328(b) a county may provide for the prevention of contagious diseases in the county. 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. Pursuant to Montgomery County Code 2-65, the Montgomery County Council is and may act as the County Board of Health.

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. Notice was sent to each municipality in the County on December 29, 2021.

Specifics of the Resolution

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

1. rescind the automatic termination of the current indoor mask mandate scheduled to occur upon reaching 85% of the total County population becoming fully vaccinated;
2. remove the requirement to end the indoor mask mandate when the County moves into moderate transmission for 7 consecutive days;
3. continue the indoor mask mandate until the Board of Health formally rescinds or amends it;
4. require the Board of Health to meet every 2 weeks to review data on community transmission and consider whether the indoor mask mandate should continue; and
5. eliminate the outdated language requiring the Executive to provide status updates on the County employee vaccination mandate.

Councilmember Friedson may introduce an amendment to add a January 25, 2022 automatic termination date for the regulation. See Friedson 1 at ©10.

If adopted, the resolution would take effect at 12:00 am on January 5, 2022. The Acting Health Officer, Dr. James Bridgers, recommends this proposed resolution. The Board of Health is scheduled to introduce, hold a public hearing, and act on this proposed resolution on Tuesday, January 4.

This packet contains:

Proposed Resolution
Friedson Amendment 1

Circle #

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10

Resolution No.: _____
Introduced: January 4, 2022
Adopted: _____

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

Lead Sponsor: County Council

SUBJECT: First 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.] is currently an area of high community transmission.
4. Under the Amended Board of Health Regulation adopted on [August 5, 2021] November 2, 2021, through Resolution No. [19-975] 19-1043, 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.] will automatically terminate effective 12:01 a.m. on the calendar day immediately following the date that 85% or more of the County’s total population is fully vaccinated, as reported by the CDC on its COVID Data Tracker.
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] Although the public health situation in the County has been aided tremendously by high vaccination rates among eligible County residents, and [will be] was aided further by the [expected widespread] vaccination of newly eligible 5-to-11-year old children, a new variant of the virus, called Omicron, was discovered after the Board of Health adopted Resolution No. 19-1043 on November 2. Omicron has become the dominant variant of the COVID-19 virus throughout the United States, including Maryland. Omicron appears to be 6 times as transmissible as the Delta variant and requires an amended public health order.
6. Although it is likely that 85% of the total population of the County will become fully vaccinated on or before January 4, 2022, on December 28, 2021 the Acting Health Officer requested the Board of Health to rescind the automatic termination of Resolution No. 19-1043 when 85% of the total County population becomes fully vaccinated due to the high transmission rate of the Omicron variant, including an increasing number of breakthrough cases of individuals who are fully vaccinated.
7. The extremely high community transmission rate of the Omicron variant requires the Board of Health to continue the indoor mask requirements of Resolution No. 19-1043 in effect for the foreseeable future in order to mitigate the spread of the virus throughout the County.
8. [10.] Pursuant to Md. Code Ann. Local Government §10-328(b) a county may provide for the prevention of contagious diseases in the county.
9. [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.
10. [12.] Pursuant to Montgomery County Code 2-65, the Montgomery County Council is and may act as the County Board of Health.
11. [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.

12. [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] November 2, 2021 under Resolution No. [19-975] 19-1043:

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

- 65 **3. Notice.**
- 66 [a.] The Health Officer or his designee promptly must notify the County
- 67 Council Sitting as the Board of Health, and the County Executive, of any
- 68 change in the County’s transmission status. At least once daily, the Health
- 69 Officer or his designee must update the County website with the County’s
- 70 current community transmission status, including information on the total
- 71 new cases per 100,000 persons in the past 7 days and the test positivity
- 72 percentage during the past 7 days.
- 73 [b.] The Health Officer or the Health Officer’s designee promptly must take
- 74 reasonable steps to notify the public if the County has become an area of
- 75 substantial transmission for 7 consecutive days. The notification:
- 76 i. must include the date and time that the face covering mandate under
- 77 paragraph 2.a. takes effect pursuant to this regulation;
- 78 ii. must be posted on the County website and distributed through a
- 79 press release; and
- 80 iii. must be sent, via email distribution list, to the governing body or
- 81 chief executive officer of each municipality in the County.]

- 82 **4. Letters of Approval Consistent with CDC Guidance.**
- 83 a. If a person, organization, or venue is unclear about the application of this
- 84 regulation to their business, event, or activity, or seeks a modification to the
- 85 face covering requirement under paragraph 2.a. consistent with CDC
- 86 guidelines, they may seek a Letter of Approval from the Health Officer or
- 87 the Health Officer’s designee.
- 88 b. Requests for a Letter of Approval must be submitted a minimum of 5
- 89 business days before a scheduled event or activity for which a Letter of
- 90 Approval is required. Failure to submit a timely request will result in an
- 91 automatic denial of the Letter of Approval.
- 92 c. Failure to obtain a required Letter of Approval prior to proceeding with an
- 93 event or activity will be considered to be a violation of this regulation and
- 94 could subject the requestor, organization, or venue to the appropriate fines
- 95 and sanctions.
- 96 d. Any person, organization, or venue that is found to have held an

97 unauthorized event or activity without a Letter of Approval will be
98 automatically disqualified from receiving a future Letter of Approval.

- 99 e. A Letter of Approval may be issued by the Health Officer or the Health
100 Officer's designee only to the extent that the conditions of approval in the
101 Letter are consistent with CDC guidelines in place at the time the Letter is
102 issued.

103 **[5. County employees – COVID-19 prevention requirements.**

- 104 a. On or before August 20, 2021, the County Executive must report to the
105 Board of Health regarding:
- 106 i. an implementation plan and schedule to require each County
107 employee who reports to work at a County facility to:
- 108 A. provide to the County, on a weekly basis, proof of a negative
109 COVID-19 test; or
- 110 B. attest to the County that the employee is fully vaccinated
111 against COVID-19; and
- 112 ii. a method by which aggregate data on County employee vaccination
113 and County employee COVID-19 testing will be made available to
114 the public.
- 115 b. On or before August 31, 2021, and weekly thereafter, the County Executive
116 must report to the Board of Health, and must make available to the public,
117 aggregate data on County employee vaccination and County employee
118 COVID-19 testing.]

119 **[6] 5. Enforcement.** This Order must be enforced by any County department or agency
120 that has authority over the subject matter of any particular provision and the
121 Montgomery County Police Department.

122 **[7] 6. Applicability.** This regulation applies Countywide.

123 **[8] 7. Severability.** If the application of this regulation or any part of it to any facts or
124 circumstances is held invalid, the rest of the regulation and its application to all
125 other facts and circumstances is intended to remain in effect.

126 **[9] 8. Effective Date.** This regulation [took] must take effect on [August 7, 2021]
127 January 5, 2022 at 12:00 a.m. [, and the amendments to the regulation adopted on
128 November 2, 2021 must take effect immediately upon their adoption by the Board

129 of Health].

130 **[10. Calculation of time; transition.**

- 131 a. For purposes of this regulation, the Health Officer must
132 begin counting a period of 7 consecutive days on the day that the
133 transmission status of the County changes according to the CDC.
- 134 b. For the period of substantial transmission that began on October 30, 2021,
135 the Health Officer must count October 30, 2021 as “day 1” in the Health
136 Officer’s calculation of 7 consecutive days of substantial transmission. If
137 the County remains in a status of substantial transmission from October
138 30, 2021 through the end of November 5, 2021, then the Health Officer
139 must provide notice under paragraph 3.b.
- 140 c. The notice to the public issued by the Acting Health Officer on October
141 30, 2021, which would have reinstated the indoor face covering
142 requirement as of November 3, 2021 at 12:01 a.m., must be deemed null
143 and void.]

144 **[11. Termination of Regulation.**

- 145 a. This regulation must terminate, and must have no further force or effect:
- 146 i. effective 12:01 a.m. on the calendar day immediately following the date
147 that 85% or more of the County’s total population is fully vaccinated, as
148 reported by the CDC on its *COVID Data Tracker*; and
- 149 ii. without any further action by the Board of Health or the Health Officer.
- 150 b. As of November 2, 2021, the CDC’s *COVID Data Tracker*:
- 151 i. has the homepage [https://covid.cdc.gov/covid-data-tracker/#datatracker-](https://covid.cdc.gov/covid-data-tracker/#datatracker-home)
152 [home](https://covid.cdc.gov/covid-data-tracker/#datatracker-home);
- 153 ii. reports data regarding Montgomery County at
154 [https://covid.cdc.gov/covid-data-tracker/#county-](https://covid.cdc.gov/covid-data-tracker/#county-view|Maryland|24031|Risk|community_transmission_level)
155 [view|Maryland|24031|Risk|community_transmission_level](https://covid.cdc.gov/covid-data-tracker/#county-view|Maryland|24031|Risk|community_transmission_level); and
- 156 iii. reports that 77.5 % of the County’s total population is fully vaccinated.]

This is a correct copy of Council action.

Selena Mendy Singleton, Esq.,
Clerk of the Council

Friedson Amendment 1 (Termination Date)

Add the following after line 156:

9. Termination

This regulation must terminate on January 25, 2022 at 11:59 p.m. without any further action by the Board of Health or the Health Officer.

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