

Resolution No.: _____
Introduced: _____
Adopted: _____

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

Lead Sponsors: Councilmembers Riemer and Alborno
Co-Sponsors: Council President Katz, Council Vice President Hucker, and Councilmembers
Navarro and Glass

Subject: **Board of Health Regulation concerning the use of face coverings and other social distancing measures.**

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. To curb the slow the spread of coronavirus, the Centers for Disease Control and Prevention (CDC) recommends the use of cloth face coverings in public settings where other social distancing measures are difficult to maintain. The CDC has provided instructions to make cloth face coverings.
5. The CDC has indicated that the social distancing, which means keeping physical space between individuals, is one of the best tools to avoid being exposed to the coronavirus and slowing the spread of the virus.
6. 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.

7. 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 requiring a face covering for certain individuals and urging other social distancing measures is necessary to protect the health of County residents.

Action

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

1 **Use of Face Coverings and Other Social Distancing Measures**

2 (a) **Definitions.** In this regulation, the following words have the meanings indicated:

3 *Employ* means to engage a person to work for compensation.

4 *Employee* means any person permitted or instructed to work or be present by an employer
5 in the County

6 *Employer* means any person, individual, proprietorship, partnership, joint venture,
7 corporation, limited liability company, trust, association, or other entity operating and
8 doing business in the County that employs 1 or more persons in the County in addition to
9 the owners. *Employer* includes the County government, but does not include the United
10 States, any State, or any other local government.

11 *Essential business* means a business that is permitted by order of the Maryland Governor
12 to remain open under the state of emergency.

13 *Enforcing agency* means one or more agencies designate by the Executive to enforce this
14 regulation.

15 *Essential employer* means an employer operating an essential business.

16 *Face covering* means a covering made of cloth or other material that covers the user’s
17 nose and mouth. A face covering includes a cloth face covering, face mask, dust mask,
18 homemade mask, scarf, bandana, or handkerchief.

19 *Self-employed essential individual* means an individual that carries on trade or business as
20 a sole proprietor or an independent contractor that is permitted by order of the Maryland
21 Governor to remain open under the state of emergency. For purposes of this regulation, a
22 self-employed individual includes a driver of a ridesharing service and a grocery delivery
23 worker.

24 *State of emergency* means the state of emergency related to the novel coronavirus
25 declared by the Maryland Governor on March 5, 2020.

26 (b) **Use of face coverings.**

27 (1) **Essential businesses.**

28 (A) **Employer responsibilities.** Beginning on April 16, 2020, an essential
29 employer must provide each employee that reports to work a face covering
30 to be used on the job if the employee interacts in person with a co-worker
31 or customer on the job. If the essential employer cannot obtain face

32 coverings for each employee, the employer must provide each employee
33 instructions on how to make face coverings.

34 (B) **Employee responsibilities.** The employee must use the face covering at
35 all times that the employee interacts in person with a co-worker or
36 customer on the job.

37 (C) **Customer responsibilities.** Beginning on April 23, 2020, a customer of
38 an essential business must use a face covering at all times that the
39 customer interacts in person with an employee of an essential business.

40 (D) **Self-employed essential individuals.** Beginning on April 16, 2020, a self-
41 employed essential individual must use a face covering at all times that the
42 individual interacts:

43 (i) in person with an employee or customer of an essential business;
44 or

45 (ii) in person with a member of the public while performing duties
46 related to the individual's self-employment.

47 (2) **Other individuals.**

48 (A) The use of a face covering for all individuals is strongly encouraged when
49 an individual is interacting in person with any other individual outside of
50 the individual's residence.

51 (B) Consistent with guidance issued by the Centers for Disease Control and
52 Prevention, cloth face coverings should not be placed on young children
53 under age 2, anyone who has trouble breathing, or is unconscious,
54 incapacitated or otherwise unable to remove the face covering without
55 assistance.

56 (3) **Exceptions.** An individual, including an employee or customer of an essential
57 business, is not required to wear a face covering if the individual has a medical
58 reason that prevents the use of a face covering.

59 (c) **Social distancing measures.** An essential business should implement policies to
60 maximize the use of social distancing, including limiting the number of customers in the
61 business, use one-way directional shopping, and regularly remind customers to practice
62 social distancing.

- 63 (d) **Enforcement.**
- 64 (1) Any violation of this regulation is a Class C civil violation. Before issuing a
- 65 citation, an enforcement officer must issue a notice of violation as allowed under
- 66 Section 1-18 of the County Code.
- 67 (2) The County Executive must designate by Executive Order one or more County
- 68 departments or agencies to enforce this regulation.
- 69 (3) The enforcing agency must investigate each complaint alleging a violation of this
- 70 regulation and take appropriate action, including issuing a civil citation when
- 71 compliance cannot be obtained otherwise.
- 72 (4) The enforcing agency must not issue a civil citation to an essential employer who
- 73 can show a good faith effort to obtain appropriate face coverings as required by
- 74 this regulation.
- 75 (e) **Applicability.** This regulation applies Countywide.
- 76 (f) **Severability.** If the application of this regulation or any part of it to any facts or
- 77 circumstances is held invalid, the rest of the regulation and its application to all other
- 78 facts and circumstances is intended to remain in effect.
- 79 (g) **Effective Date; sunset date.** This regulation takes effect on the date on which it is
- 80 adopted and sunsets 15 days after the state of emergency ceases.

This is a correct copy of Council action.

Selena Mendy Singleton, Esq., Clerk of the Council