

Montgomery County Council
sitting as the Montgomery County Board of Public Health

Public Hearing on the Board of Health Regulation to prevent the spread of COVID-19 in the
County, Vaccination Requirements to Enter Bars, Restaurants,
Fitness Centers, and Other Covered Establishments

January 18, 2022

Testimony of Aaron Droller
Silver Spring, Maryland

Good morning Council President Albornoz and members of the Montgomery County Council. My name is Aaron Droller, and I am a resident of Silver Spring, Maryland. Thank you for the opportunity to submit testimony on the Board of Health Regulation to prevent the spread of COVID-19 in the County, Vaccination Requirements to Enter Bars, Restaurants, Fitness Centers, and Other Covered Establishments (Regulation).

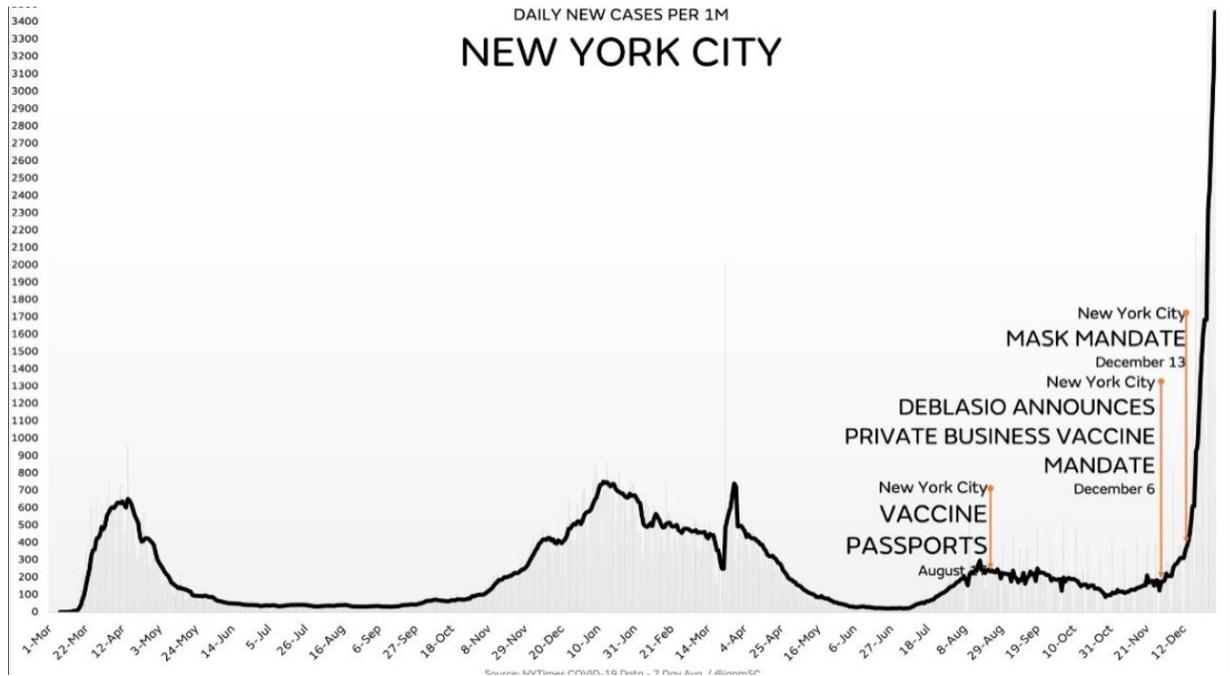
While I strongly support the use of vaccines, I am writing to respectfully request that you vote against this Regulation. As proposed by the County Executive, the Regulation establishes proof of vaccination requirements, commonly referred to as vaccine passports, to enter certain businesses and facilities, with limited exemptions. I understand that several members of this Council have already voiced support for this measure in principle, but I ask you to please reconsider given mounting evidence that vaccine passports are ineffective, outdated, and inappropriate in Montgomery County.¹

The purported objectives of vaccine passports, as described in the Regulation or by public statement, can be distilled into three primary areas: (1) mitigate the spread of COVID-19; (2) incentivize vaccination; and (3) provide a level of comfort, predictability, and safety to patrons or businesses. Vaccine passports will achieve none of these objectives.

There is very little, if any evidence, to support the proposition that vaccine passports help mitigate the spread of COVID-19, particularly regarding the omicron variant (omicron). The County Executive can point to no studies, data, or evidence that supports this proposition. From real world experience, we know vaccine passports are an ineffective mitigation measure. New York City implemented its vaccine passport well before the onset of omicron, and the subsequent

¹ <https://www.nbcwashington.com/news/local/montgomery-county-considers-requiring-proof-of-vaccination-for-restaurants-venues/2924017/> (last visited January 7, 2022).

spike in cases, without any discernible mitigation effect, demonstrates its failure. This is not a model that Montgomery County should seek to emulate.



It is clearly established that the virus commonly breaks through fully vaccinated and boosted people. According to the state of Maryland, approximately 30% of all confirmed COVID-19 cases in Maryland since January 2021 have been among fully vaccinated individuals.² Because groups of fully vaccinated and boosted people quite easily spread the virus amongst themselves and others, the vaccine passport is an outdated approach in the age of omicron.

The County Executive cites to a Lancet study that purports to study the effect of vaccine passports on vaccination uptake.³ This study is inapplicable to Montgomery County. The study suggests that a few countries with low vaccination rates may have seen increases in vaccine

² <https://coronavirus.maryland.gov/#Vaccine> (last visited January 7, 2021)

³ [https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667\(21\)00273-5/fulltext](https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667(21)00273-5/fulltext).

uptake. It’s worth noting that this study was from April 2021 to August 2021, when vaccine availability was just beginning to become widespread. Montgomery County is in a very different place. We are among the highest vaccinated large counties in the United States.⁴ The Lancet study itself notes that “[m]andatory COVID-19 certification could increase vaccine uptake, but interpretation and *transferability of findings need to be considered in the context of pre-existing levels of vaccine uptake and hesitancy*, eligibility changes, and the pandemic trajectory.” (Emphasis added). In Montgomery County, residents have enthusiastically embraced vaccination, including booster shots. The County Executive has provided no evidence that vaccine passports induce higher vaccination uptake in a population that is already highly vaccinated. Simply put, Montgomery County residents do not need vaccine passports as additional incentive to get vaccinated.

Vaccinations in Montgomery County, Maryland

People Vaccinated	At Least One Dose	Fully Vaccinated
Total	1,031,983	879,167
% of Total Population	95%	83.7%
Population ≥ 5 Years of Age	1,031,856	879,149
% of Population ≥ 5 Years of Age	95%	89.1%
Population ≥ 12 Years of Age	979,693	842,824
% of Population ≥ 12 Years of Age	95%	94.5%
Population ≥ 18 Years of Age	891,432	765,670
% of Population ≥ 18 Years of Age	95%	94.7%
Population ≥ 65 Years of Age	190,658	168,255
% of Population ≥ 65 Years of Age	95%	95%

There is some indication from policy makers and the public that vaccine passports are desirable as a matter of comfort, safety, and predictability, as patrons in a business establishment will know that everyone around them is presumably vaccinated. This assumption, while understandable, is not supported by the risk profile from omicron in the county. Rather, it is

⁴ https://covid.cdc.gov/covid-data-tracker/#county-view?list_select_state=Maryland&data-type=Risk (last visited January 7, 2022).

policy making based on emotion rather than reason. As previously stated, breakthrough cases among fully vaccinated and boosted residents are extremely common. There is no assurance that being among similarly vaccinated individuals will provide any sort of cocoon or protection from the virus. Further, given our high rate of vaccination, most patrons can already presume almost everyone around them is already vaccinated.

Many Councilmembers have suggested the importance of acting as a region in our public health efforts. This goal, while laudable, cannot override the different needs of different jurisdictions. Currently, only the District of Columbia has a legally authorized vaccine passport program in our region. The needs of the District of Columbia, a tightly packed urban jurisdiction and an international tourist destination, are not the same as suburban, highly vaccinated Montgomery County. Currently, no other jurisdiction has a similar program, including Howard, Prince George's, Anne Arundel, Frederick, or Fairfax counties. Given our vaccination rate and robust healthcare infrastructure, Montgomery County should follow our regional partners that maintain the least restrictive covid policies.

The Regulation also presents ethically dubious or medically incoherent approaches. As introduced, it requires children ages 5 and up to present a vaccine passport as of March 1, 2022 verifying one dose of vaccine. As of today, the only vaccine authorized for children that age is authorized only as an Emergency Use Authorization (EUA). No child should be excluded from society because they have not received an EUA vaccine, particularly given how little risk the virus poses to this age cohort. By contrast, senior centers are exempted from the vaccine passport under the Regulation. This exemption makes little medical sense, given that this age cohort is by far the most vulnerable to the virus. The Regulation's approach is haphazard, scientifically incoherent, and requires far greater scrutiny before being approved by the Council.

There are also practical and administrative concerns with the Regulation. There are significant cybersecurity and medical privacy concerns with Maryland MyIR and the myriad other digital vaccine record products coming online. People without compatible smart phones are also unable to access certain digital ID formats. Paper or pdf documents are easily forged, destroyed, and are unreliable. These administrative issues will present significant inconvenience and costs to residents and businesses alike as time passes and the viral situation on the ground shifts.

The Regulation also places significant additional costs and burdens on our business community. It targets those businesses that have suffered the most during this pandemic. While “big box stores” are exempt under the Regulation, small businesses and restaurants are required to implement it, without any regard for the time and costs involved. Restaurant employees and gym attendants will often need to make extremely subjective judgment calls to verify vaccine passports, increasing the potential for conflict between patron and business owner when an app goes awry, or a piece of paper is forgotten at home. It also puts businesses in the impossible position of verifying if a patron has a valid religious or medical exemption, while exposing themselves to potential liability and costly enforcement actions.

It’s worth noting that, according to Montgomery County statistics, the African American vaccination rate is currently lower relative to other ethnic groups and its share of the population, particularly in the 5–11-year-old age range. Accordingly, the aggressive implementation of a vaccine passport could have a racially disparate impact.⁵ So too, the Regulation unfairly targets and discriminates against families with young children, since that population is also less likely to be vaccinated at this time. Children’s lives have been turned upside down during this pandemic

⁵ <https://www.montgomerycountymd.gov/covid19/Resources/Files/pulse/DHHS-Pulse-220105.pdf> (last visited January 5, 2021).

as they have borne a very high burden under the policies of this county and the school system. It should never be the policy of this government to socially castigate and isolate groups of people, even in the name of public health.

The county should only implement COVID-19 policies that are narrowly tailored and time limited. This Regulation does not meet those standards because there is no limiting principle at its core. For example, the Regulation grants the Health Officer near unlimited power to require an indoor establishment to implement a vaccine passport “upon reasonable advance public notice,” but without opportunity for public comment or any procedural due process.

One of the lessons of this period is that additional variants will come and go, and additional vaccine doses will be authorized, possibly in perpetuity. This vaccine passport has no sunset date, and once implemented, will metastasize beyond what is intended into a permanent feature of life in Montgomery County. The vaccine passport must not be allowed to follow that path. This Council must firmly establish a limiting principle at the outset if it chooses to pass this Regulation, or residents have no assurance it will ever be repealed.

The Regulation will not meet any of its intended public health objectives. In the long run, it will only serve to exacerbate social tensions and turn neighbor against neighbor. Montgomery County is an inclusive community. We should not wish to exclude groups of people from society with a poorly conceived policy. Please vote against this Regulation. It is the wrong path for Montgomery County. Thank you for your time and consideration.