

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:20-cv-01480-RM

HIGH PLAINS HARVEST CHURCH, and
MARK HOTALING,

Plaintiffs,

v.

JARED POLIS, in his official capacity as Governor of the State of Colorado, and
JILL HUNSAKER RYAN, in her official capacity as Executive Director of the Colorado
Department of Public Health and Environment,

Defendants.

**STATE DEFENDANTS' OPPOSITION TO PLAINTIFFS' RENEWED MOTION FOR
TEMPORARY RESTRAINING ORDER AND FOR PRELIMINARY INJUNCTION**

When faced with a society-threatening pandemic, our constitutional structure empowers state governments to protect their residents. *See Jacobson v. Massachusetts*, 197 U.S. 11, 31 (1905) (upholding state public health authority to fight smallpox epidemic); *South Bay United Pentecostal Church v. Newsom*, No. 19A1044, 2020 WL 2813056 at *2 (2020) (Roberts, C.J., concurring in denial of application for injunctive relief and reaffirming *Jacobson* framework). And under Colorado statute, this authority rests with the Governor and the Colorado Department of Public Health and Environment, or CDPHE, who have broad emergency powers to safeguard public health. The steps taken to address the COVID-19 pandemic have limited all aspects of daily life for most Coloradans, including those seeking to worship together. These emergency measures, however, have not targeted religious gatherings as such, and the State has balanced

public health with religious freedom. Houses of worship have remained open, and many have adapted using online, drive-in, or other creative ways of worship. But because of the documented public health risks posed by people gathering indoors in one place for extended periods of time, the State currently prevents houses of worship, like schools and indoor athletic events, from gathering indoors more than 50 people in the same room at the same time, or fewer in smaller spaces. After all, “[t]he right to practice religion freely does not include liberty to expose the community ... to communicable disease.” *Prince v. Massachusetts*, 321 U.S. 158, 166–67 (1944).

Because Colorado developed the Orders at issue here—Executive Orders D 2020 044 and D 2020 091, and Public Health Order 20-28 (the “Orders”)—based on established science to limit the spread of the COVID-19 pandemic, and the Orders do not target religious exercise, they do not violate the First Amendment, or any other constitutional provision, as applied to Plaintiffs. The purpose of these orders is to protect the public, including members of the Plaintiffs’ church, from the COVID-19 pandemic.

Plaintiffs’ first Verified Complaint alleged that earlier versions of the Orders violated the First Amendment because Plaintiffs were unable to worship together in a group of 50, while the Orders permitted some businesses, like hardware stores, to continue operating. [Doc. 1 ¶¶ 1, 22, 29.] After the Supreme Court’s order in *South Bay*, 2020 WL 2813056, denying a similar application for preliminary injunctive relief in a California case, Plaintiffs withdrew their then pending motion for temporary restraining order and preliminary injunction. [Doc. 34 ¶¶ 3-5.] The Orders were recently amended and now permit Plaintiffs to worship collectively *in a group*

of 50—the very relief requested in their original complaint.¹ In an amended pleading, Plaintiffs now argue that their religious exercise is substantially burdened if they cannot meet together in a body *larger than 50*, in light of the fact that some Coloradans have been protesting in large numbers since late May. [Doc. 34 ¶ 41.] Plaintiffs allege without factual support that State Defendants have “encouraged” these protests. [Doc. 34 ¶ 7.]

As the Court is no doubt aware, in late May nationwide protests broke out over the death of George Floyd at the hands of the Minneapolis Police Department and other acts of violence perpetrated by police officers against the Black community. Protests started in Denver on the evening of May 28, 2020 and have continued since. The protests have drawn thousands of people and have involved law enforcement and the media. The Orders do not permit the protests. But in light of the risk of COVID-19 transmission at the protests, CDPHE issued guidance encouraging participants to maintain physical distancing, wear a mask, and get tested for COVID-19. Plaintiffs fail to offer any evidence at all to support their allegation that State Defendants “encouraged” these protests. [Doc. 34 ¶ 7.]

Under the emergency circumstances of the COVID-19 pandemic, the sole question presented to the Court is whether the Governor and CDPHE acted reasonably, in good faith, and in furtherance of public safety in implementing the restrictions reflected in the Orders. They undoubtedly did. Because Plaintiffs have no reasonable likelihood of success on the merits of their claims, their requests for a TRO and preliminary injunction must fail.

¹ Plaintiffs represent that the sanctuary of their church can hold 150 people. [Doc. 34 ¶ 42.]

FACTUAL BACKGROUND

I. The scope of the global COVID-19 pandemic.

COVID-19 is a public health emergency unlike any the world has seen in the last 100 years, since the 1918–1919 influenza pandemic killed as many as 50 million people worldwide. COVID-19 is a respiratory illness caused by a novel coronavirus. The virus is identified as severe acute respiratory syndrome coronavirus 2, which is abbreviated as SARS-CoV-2. Ex. 1, Declaration of Dr. Eric France, Chief Medical Officer of CDPHE, ¶ 12. The disease was first identified almost six months ago in Wuhan, China.² Since then, COVID-19 has spread across the globe, infected nearly 5.5 million people, and killed about 350,000.³ Ex. 1, ¶ 24. On March 11, 2020, the World Health Organization declared COVID-19 to be a pandemic, and two days later President Trump declared a national emergency.⁴ The Centers for Disease Control and Prevention has forecast that a total of 124,000 to 140,000 residents of the United States will likely die of the virus by July 4, 2020.⁵

² See *Q&A on Coronaviruses (COVID-19)*, World Health Organization (Apr. 17, 2020), <https://www.who.int/news-room/q-a-detail/q-a-coronaviruses>.

³ The spread and effect of COVID-19 is constantly changing, and exact numbers are a moving target. Between the time this brief is filed, and when the court reads it, hundreds—if not thousands—of people will die from COVID-19.

⁴ President Donald J. Trump, Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak (Mar. 13, 2020), <https://tinyurl.com/yx3z9jjp>.

⁵ *COVID-19 Forecasts: Cumulative Deaths*, Centers for Disease Control & Prevention (June 12, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/forecasting-us.html>. The New York Times recently reported that over 113,974 people have already died. *Coronavirus in the U.S.: Latest Map and Case Count*, N.Y. Times (June 12, 2020), <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html>.

In Colorado, as of June 11, 2020, there were 28,647 known COVID-19 cases, and public health officials estimate that about 170,000 Coloradans are or have been infected with COVID-19. Ex. 2, Declaration of Dr. Rachel Herlihy, State Epidemiologist with CDPHE, ¶ 12. In the same timeframe, 5,057 Coloradans have been hospitalized and 1,339 have died. *Id.* at ¶ 14.

COVID-19 primarily attacks a patient's respiratory system. Ex. 1, ¶ 12. In about 20% of all cases, hospitalization is required. *Id.* at ¶¶ 15–16. In comparison, the seasonal flu has a hospitalization rate of only 1%–2%. *Id.* at ¶ 18. More dangerous, however, are the critical cases, which account for about 5% of all COVID-19 cases. A critical case usually involves multiple organ failure and requires a ventilator to support the patient. Even with intensive supportive care, only 30% of people with a critical case are expected to survive. *Id.* at ¶ 17.

More than just deadly, COVID-19 is insidious. It is passed person-to-person through droplets in the air, often caused by coughing or sneezing. *Id.* at ¶ 27. A person is contagious before they are symptomatic—if they become symptomatic at all. *Id.* at ¶ 28. Current data estimates that 20%–40% of all infections were spread by asymptomatic individuals. *Id.* COVID-19 is highly contagious. Each infected person, on average, infects 3 additional people. *Id.* at ¶ 26. In turn, those individuals infect 3 new people, and so on, causing COVID-19 to grow exponentially in a population. Reducing the potential population a person can infect has substantial impacts on the spread of the disease.

Large indoor gatherings of people together for extended periods of time, including religious services, have caused substantial spread of the virus, including the following:

- In Washington, following a 2.5-hour choir practice, 87% of the 61 attendees contracted COVID-19 and 2 have died. Among the people who attended the practice, only one is known to have been symptomatic.⁶
- In Arkansas, among 92 people who attended worship services at a church, 35 developed cases of COVID-19 and 3 people died. The virus did not stop there: at least 26 community members were likely infected by those participants, including one person who died.⁷
- In Jordan, an indoor wedding ceremony and party was cited as the source of 76 COVID-19 infections, among 350 identified attendees. Those who were infected subsequently passed on the disease to household members.⁸
- In Indiana, five people died and at least a dozen more tested positive or experienced symptoms of COVID-19 after attending a high school basketball tournament.⁹

⁶ Lee Hamner, et al., *High SARS-CoV-2 Attack Rate Following Exposure at a Choir Practice – Skagit County, Washington, March 2020*, 69 Morbidity & Mortality Wkly. Rep. 606 (U.S. Dep’t Health & Human Servs./Centers for Disease Control & Prevention) (May 15, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/pdfs/mm6919e6-H.pdf>.

⁷ Allison James, et al., *High COVID-19 Attack Rate Among Attendees at Events at a Church – Arkansas, March 2020*, 69 Morbidity & Mortality Wkly. Rep. 632 (U.S. Dep’t Health & Human Servs./Centers for Disease Control & Prevention) (May 22, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6920e2.htm>.

⁸ Dawood Yusef, et al., *Large Outbreak of Coronavirus Disease Among Wedding Attendees, Jordan*, Emerging Infectious Diseases, Centers for Disease Control & Prevention (May 20, 2020), <https://tinyurl.com/y9bsd12c>.

⁹ Kyle Neddenriep, *It Was the Hottest Basketball Sectional. Then Attendees Started Dying of Coronavirus*, Indianapolis Star (Apr. 18, 2020), <https://tinyurl.com/ycua2trf>.

- In Germany, a Frankfurt church became the center of an outbreak involving at least 107 people, after some of them attended a single church service. This cluster emerged even though the church reportedly adhered to social distancing and disinfecting guidelines.¹⁰

As these examples illustrate, at indoor gatherings, including services at houses of worship, around the world, participants have become infected with COVID-19 and spread the illness to people in their broader communities.¹¹ When people congregate in these types of close indoor settings, they do not just put themselves at risk. They also endanger the people who never chose to attend the gathering.

One of the most effective tools, proven by decades of research, available to public health officials is social distancing.¹² Social distancing is a nonpharmaceutical intervention that reduces the spread of an infection. Ex. 2, ¶¶ 30–40. In addition to reducing the spread of an infection, social distancing diminishes a surge of critically sick people seeking medical care. *Id.* at ¶ 33. Such a surge could easily overwhelm the healthcare system. *Id.*

Because there is no proven treatment for COVID-19, the most serious cases receive

¹⁰ William Boston, *More than 100 in Germany Found to Be Infected with Coronavirus After Church's Service*, Wall Street Journal (May 24, 2020), <https://tinyurl.com/yaro4n35>.

¹¹ Reports published by the Centers for Disease Control and Prevention have highlighted high levels of transmission relating to indoor events including religious services, a wedding and a choir practice. Transmission at these events was facilitated by close interpersonal contact; singing, which may have a higher risk of emitting viral material as participants vocalize; hugging; dancing; and sharing chairs and food. *See* above pages 5–6, notes 6–8.

¹² Howard Markel, et. al., *Nonpharmaceutical Interventions Implemented by US Cities During the 1918–1919 Influenza Pandemic*, JAMA (Aug. 8, 2007), <https://tinyurl.com/y7vppy6y>.

supportive care, and, in some cases, investigatory medicine. Ex. 1 at ¶¶ 16–17. For serious cases, this supportive care can make the difference between survival or death. Because of COVID-19’s infection rate and its hospitalization rate, strong social distancing measures are required to prevent the overwhelming of Colorado’s healthcare system and to ensure that serious cases receive the necessary care. Current data tells us that social distancing must achieve a 65% reduction in social interactions in order to avoid exceeding total capacity of Colorado’s intensive care units. Ex. 2 at ¶¶ 36–37. Colorado’s public health orders seek to achieve this necessary degree of social distancing to keep the surge of cases under the ICU threshold. *Id.* at ¶¶ 36–40. While the evidence shows that it has worked to date, more time is needed to understand the full effect of the current measures. *Id.* at ¶¶ 78–79.

Critically, suppressing this first wave of COVID-19 does not mean that interventions are no longer necessary. *Id.* at ¶¶ 77–81. Because COVID-19 is caused by a novel coronavirus, the human population does not have the immunity or resistance that it would with a virus it had been exposed to over time. Nor do we have effective drugs or a vaccine. The very real potential remains that if people resume close contact with one another, and if they do so too quickly, the virus will again begin to spread exponentially. *Id.* This would cause another wave of the disease through the population, the need to return to stay-at-home restrictions, and the same threat that the healthcare system would be overwhelmed. *Id.* Indeed, several states that have loosened restrictions have recently seen major upticks in COVID-19 cases.¹³

¹³ Adrianna Rodriguez, *Why Are States Seeing a Sudden Increase in Coronavirus Cases? Experts Have More Than One Answer*, USA Today (June 11, 2020), <https://www.usatoday.com/story/news/health/2020/06/11/coronavirus-experts-explain-why-covid-19-cases-spike-these-states/5333309002/>.

II. Colorado's response to the COVID-19 pandemic.

Emergency Declaration and Stay at Home Orders

Colorado has been in a declared state of emergency since March 10, 2020, due to the COVID-19 pandemic. Over the last two and a half months, the Governor and CDPHE have issued a series of executive orders and public health orders to slow the spread of the virus. In a series of public health orders issued in mid-March 2020, CDPHE (a) restricted visitors at Colorado skilled nursing facilities, assisted living residences, and intermediate care facilities; (b) closed bars, restaurants, theaters, gyms, and casinos; (c) limited mass gatherings to no more than 10 people; and (d) implemented a 50% reduction in nonessential business in-person work.¹⁴

On March 25, 2020, Governor Polis issued Executive Order D 2020-017, which directed Coloradans to stay at home.¹⁵ Consistent with that Executive Order, CDPHE amended its Public Health Order 20-24 several times; the last version required Coloradans to stay at home whenever possible. Under the order, Coloradans were required to comply with social distancing requirements and were permitted to leave their homes only to perform necessary activities. By Executive Order, the stay at home requirements were extended through April 26, 2020.¹⁶

¹⁴ Notice of Public Health Order 20-20 (Mar. 12, 2020) (nursing facilities), Updated Notice of Public Health Order 20-22 (Mar. 19, 2020) (bars, restaurants, theaters), Amended Public Health Order 20-23 (Mar. 20, 2020) (social distancing); Public Health Order 20-24 (Mar. 22, 2020) (work restrictions), <https://covid19.colorado.gov/covid-19-in-colorado/public-health-executive-orders-resource>.

¹⁵ Exec. Order D 2020 017, *Ordering Coloradans to Stay at Home Due to the Presence of COVID-19 in the State* (Mar. 25, 2020), <https://tinyurl.com/v6zjrj6>.

¹⁶ Exec. Order D 2020 024, *Amending and Extending Executive Order D 2020 017 Ordering Coloradans to Stay at Home Due to the Presence of COVID 19* (Apr. 6, 2020), <https://tinyurl.com/ru977jr>.

These orders have worked. As a result of these measures, the doubling rate of COVID-19 (i.e. the number of days required for the number of confirmed cases to double) has slowed from every 2-3 days in mid-March, to every 6-12 days in early April. Ex. 1, ¶ 37.

Safer at Home Orders

As a result of the efficacy of the stay-at-home orders, the State Defendants have begun to ease restrictions slowly. On April 27, 2020, the Governor issued Executive Order D 2020 044 Safer at Home, attached as Exhibit 3, which implemented certain measures to allow some Coloradans to return to work while maintaining a sustainable level of social distancing.

CDPHE released its Third Amended Public Health Order 20-28, Safer at Home, attached as Exhibit 4, on May 14, 2020. This Third Amended Public Health Order helped transition Colorado from a stay at home model to a safer at home model. CDPHE also released its first guidance for places of worship, attached as Exhibit 5.

On May 25, 2020, the Governor issued Executive Order D 2020 079, attached as Exhibit 6, amending and extending Executive Order D 2020 044, Safer at Home, for an additional eight days, until June 1, 2020. As the Governor's May 25, 2020 Executive Order states:

While we have seen indications that our efforts to “flatten the curve” are working, increased transmission of the virus continues to threaten Coloradans’ way of life and livelihoods. As we take steps to return Coloradans to work, we must continue to practice social distancing at a high level and implement other measures, such as limiting our social interactions, extra precautions for Vulnerable Individuals, and wearing non-medical masks while in public to facilitate a step towards reopening the economy while protecting public health. While this is another step toward resuming our daily lives, the State is monitoring the spread of COVID-19 and additional precautions may be necessary in the future.

Ex. 6 at 1–2. In connection with this Executive Order, CDPHE released its Fourth Amended Public Health Order 20-28, Safer at Home, attached as Exhibit 7.

Since Plaintiffs filed their original motion for preliminary relief, Colorado has continued with its planned reopening. On June 1, the Governor issued Executive Order D 2020 091, Safer at Home and in the Vast, Great Outdoors, attached as Exhibit 8.

On June 2, CDPHE issued its Fifth Amended Public Health Order 20-28, Safer at Home and in the Vast, Great Outdoors, which is attached as Exhibit 9. As with the amendments before it, this public health order continued to ease restrictions on community activities.

Houses of worship were specifically addressed in the Fifth Amended order. Specifically, effective June 4, houses of worship were allowed to open to 50% of the posted occupancy limit indoors not to exceed 50 people, whichever is less, while meeting the social distancing requirements in every direction between non-household members. Ex. 9, § II.M. For a worship service conducted outdoors, a house of worship was required to maintain six-foot social distancing from non-household members and was required to work with the local public health authority to obtain approval for the maximum number of individuals who are permitted in the outdoor space. *Id.* At the same time, CDPHE published draft guidance for houses of worship, and invited public comment on that guidance. No comment was received from High Plains Harvest Church or Mr. Hotaling.

After reviewing public comment, CDPHE issued Sixth Amended Public Health Order 20-28, Safer at Home and in the Vast, Great Outdoors on June 5, which is attached as Exhibit 10. After considering public comment, the order was changed so that houses of worship could host up to 50 people, at 50% of posted occupancy level, for every room in a worship facility. This change again increased the number of people who can participate in any given religious service.

The State Defendants’ recent Orders have not changed the regulations for movie and performance theaters, opera houses, concert halls, and music halls, which remain closed to members of the public. Ex. 10 at 6–7; § II.A.3. Similarly, conferences, conventions, and other large gatherings of people remain prohibited. *Id.* at 5–6.

Impact of Orders on Houses of Worship

PHO 20-28, the current version of which is attached as Exhibit 10, defines “Critical Business” to include houses of worship, which are permitted to operate as set forth in the Order. Under that framework, houses of worship must still comply with social distancing and limits on gathering size. However, this language has changed such that houses of worship can now host up to five times as many people in a service indoors as it could during the original Stay at Home order. If a house of worship has a large facility with multiple rooms, it may host many more congregants indoors.

Unlike movie theaters, sporting event venues, or similar settings, houses of worship were never closed by public health or executive orders. CDPHE’s final Guidance for Places of Worship provides that places of worship may host gatherings of 50% of the posted occupancy limit, up to 50 people, where physical distancing of 6 feet is observed. Ex. 11 at 1. Places of worship may host more than one 50-person gathering in the same building, at the same time, provided that the gatherings occur in separate rooms. *Id.* Places of worship also may host drive-in services in parking lots or similar venues and may broadcast services with a crew of ten people or less, so long as physical distancing is observed. *Id.* Finally, houses of worship may host outdoor services without a state-imposed limit as long as they observe the social distancing and other requirements in the order and work with their local public health agencies. *Id.* at 4.

Guidance For Those Attending Protests

CDPHE released guidance for protestors, law enforcement, and members of the media to stay safe and protect themselves from COVID-19 transmission if they choose to engage in protests. *See* Exhibit 12, CDPHE Guidance for People Attending Protests. CDPHE strongly encourages that participants maintain physical distancing, wear a mask, and get tested if they believe they have COVID-19 symptoms or were exposed to someone with COVID-19. *Id.*

LEGAL STANDARD

Because “a preliminary injunction is an extraordinary remedy, the right to relief must be clear and unequivocal.” *Schrier v. Univ. of Colo.*, 427 F.3d 1253, 1258 (10th Cir. 2005) (quotation omitted). Plaintiffs must establish (1) a substantial likelihood of success on the merits, (2) that they will suffer irreparable injury if the preliminary injunction is denied, (3) that the threatened injury to Plaintiffs outweighs the injury caused by the injunction, and (4) that an injunction is not adverse to the public interest. *Schrier*, 427 F.3d at 1258. The last two factors, the balance of equities and the public interest, “merge when the Government is the opposing party.” *Nken v. Holder*, 556 U.S. 418, 435 (2009). The plaintiff bears the burden of proof to demonstrate that each factor tips in his or her favor. *Heideman v. S. Salt Lake City*, 348 F.3d 1182, 1188–89 (10th Cir. 2003). Courts evaluate motions for temporary restraining orders under the same standards applicable to requests for preliminary injunctions. *See Martin/Martin, Inc. v. Kling Stubbins, Inc.*, 19-CV-01233-RM-KLM, 2019 WL 2357303, at *1 (D. Colo. June 4, 2019).

Where, as here, the requested injunction would afford the movant all the relief that it could recover at the conclusion of a full trial on the merits, the motion “must be more closely scrutinized to assure that the exigencies of the case support the granting of a remedy that is

extraordinary even in the normal course.” *Schrier*, 427 F.3d at 1259 (quotations omitted). In such a case, a plaintiff is required “to make a heightened showing of the four factors,” *RoDa Drilling Co. v. Siegal*, 552 F.3d 1203, 1208–09 (10th Cir. 2009), and demonstrate that “on balance, the four [preliminary injunction] factors weigh heavily and compellingly in his favor,” *O Centro Espirita Beneficiente Uniao Do Vegetal v. Ashcroft*, 389 F.3d 973, 977 (10th Cir. 2004) (quotations omitted).

ARGUMENT

I. Plaintiffs cannot show a substantial likelihood of success on the merits or irreparable harm.

Federal courts have long recognized that states may exercise wide-ranging police powers to prevent the spread of infectious disease, even if the measures might otherwise constitute a constitutional deprivation. Further, even if the court analyzes Plaintiffs’ claims under the standard of review applied in non-emergency circumstances, Plaintiffs fail to show a likelihood of success because the Orders are neutral, generally applicable laws that are rationally related to Colorado’s interest in slowing the spread of COVID-19.

A. The Orders are Constitutional exercises of Colorado’s broad police powers to respond to a public health emergency.

The Supreme Court established a framework governing the emergency exercise of state authority during a public health emergency in *Jacobson v. Massachusetts*, 197 U.S. 11 (1905). The Court rejected a claim that a state compulsory vaccination law violated the defendant’s Constitutional rights and held that “the liberty secured by the Constitution...does not import an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint.” *Id.* at 26. Instead, “a community has the right to protect itself against an epidemic of

disease which threatens the safety of its members.” *Id.* at 27. During a public health emergency, the traditional tiers of constitutional scrutiny do not apply, and a court may overturn public health laws only if they lack a “real or substantial relation to [public health]” or amount to “plain, palpable invasion[s] of rights.” *Id.* at 27, 31.

Recently, in *South Bay United Pentecostal Church v. Newsom*, the Supreme Court denied a church’s application for injunctive relief against California’s public health orders. *See* 2020 WL 2813056 (2020). Concurring in the denial, Chief Justice Roberts explained:

The precise question of when restrictions on particular social activities should be lifted during the pandemic is a dynamic and fact-intensive matter subject to reasonable disagreement. Our Constitution principally entrusts “[t]he safety and the health of the people” to the politically accountable officials of the States “to guard and protect.” *Jacobson v. Massachusetts*, 197 U.S. 11, 38, 25 S. Ct. 358, 49 L. Ed. 643 (1905). When those officials “undertake[] to act in areas fraught with medical and scientific uncertainties,” their latitude “must be especially broad.” *Marshall v. United States*, 414 U.S. 417, 427, 94 S. Ct. 700, 38 L. Ed.2d 618 (1974). Where those broad limits are not exceeded, they should not be subject to second-guessing by an “unelected federal judiciary,” which lacks the background, competence, and expertise to assess public health and is not accountable to the people. *See Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528, 545, 105 S. Ct. 1005, 83 L.Ed.2d 1016 (1985).

That is especially true where, as here, a party seeks emergency relief in an interlocutory posture, while local officials are actively shaping their response to changing facts on the ground. The notion that it is “indisputably clear” that the Government’s limitations are unconstitutional seems quite improbable.

Id. at *1–2; *see also Lawrence v. Colorado*, No. 20-cv-00862-DDD-SKC, 2020 WL 2737811 at *8 (D. Colo. Apr. 19, 2020) (Dominico, J.) (declining to enjoin similar COVID-19 public health orders and holding *Jacobson* is “both binding and illustrative.” (citing *Jacobson*, 197 U.S. at 31,

35)).¹⁷ As Chief Justice Roberts’ concurrence in *South Bay* makes clear, COVID-19 qualifies as the type of public health crisis contemplated by *Jacobson* and local officials have the ability to “actively shap[e] their response to changing facts on the ground.” 2020 WL 2813056, at *2.¹⁸

As of June 11, 2020, the virus has infected 28,647 people and directly caused the death of 1,339 individuals in the state. Ex. 2, ¶ 12. Because the pandemic continues to threaten the lives of Coloradans, Colorado has the power—and duty—to take measures to protect the public.¹⁹

¹⁷ Plaintiffs argue *Lawrence* is supportive of their case, citing dicta that a church, unlike the *Lawrence* plaintiff, likely would have standing. [Doc. 35 ¶ 10.] Plaintiffs’ argument is inapposite as standing is not at issue here. Instead, *Lawrence* supports State Defendants’ position because it refused to enjoin similar public health orders under *Jacobson*. *Lawrence v. Colorado*, No. 20-cv-00862-DDD-SKC, 2020 WL 2737811 at *8 (D. Colo. Apr. 19, 2020).

¹⁸ Other courts repeatedly have applied *Jacobson*’s framework to uphold stay-at-home orders intended to slow the spread of COVID-19. *See, e.g., Calvary Chapel Lone Mountain v. Sisolak*, No. 2:20-cv-00907-RFB-VCF (D. Nev. June 11, 2020) (citing Chief Justice Roberts’ concurrence in *South Bay* and holding that “whether a church is more like a casino or more like a concert or lecture hall for purposes of assessing risk of COVID-19 transmission is precisely the sort of ‘dynamic and fact-intensive’ decision-making ‘subject to reasonable disagreement,’ that courts should refrain from engaging in.” (citing *South Bay*, 2020 WL 2813056 at *1–2) (attached as Ex. 13)); *Spell v. Edwards*, CV 20-00282-BAJ-EWD, 2020 WL 2509078, at *5 (M.D. La. May 15, 2020) (holding that under *Jacobson*, plaintiffs could not demonstrate likelihood of success on free exercise or equal protection claims); *Elim Romanian Pentecostal Church v. Pritzker*, 20 C 2782, 2020 WL 2468194, at *3 (N.D. Ill. May 13, 2020) (same); *Cassell v. Snyders*, 20 C 50153, 2020 WL 2112374, at *6 (N.D. Ill. May 3, 2020) (same); *Gish v. Newsom*, No. EDCV20755JGBKKX, 2020 WL 1979970, at *5 (C.D. Cal. Apr. 23, 2020). *But see, e.g., First Baptist Church v. Kelly*, 20-1102-JWB, 2020 WL 1910021, at *5 (D. Kan. Apr. 18, 2020) (executive orders that were not facially neutral were subject to strict scrutiny).

¹⁹ The Colorado legislature delegated to CDPHE the power and duty to investigate and control the spread of disease during an emergency epidemic. C.R.S. § 25-1.5-102(1)(a)(I), (1)(b)(I)–(II), (1)(c). It vested in the Governor the power and duty to declare such an emergency. C.R.S. § 24-33.5-704(4); C.R.S. § 24-33.5-703(3), (3.5), (4). As a check on the Governor’s emergency powers, “[t]he general assembly, by joint resolution, may terminate a state of disaster emergency at any time.” C.R.S. § 24-33.5-704(4).

Under *Jacobson*, the Orders have a real and substantial relation to the COVID-19 pandemic.

Indeed, without similar stay-at-home and safer-at-home Orders, an estimated 80,000 number of Coloradans would have died, and the state's hospitals could have been overrun. Ex. 1, ¶ 35.

Social distancing is proven to reduce the spread and severity of a viral outbreak. Ex. 2 ¶¶ 30–40.

It can prevent vital healthcare services from becoming overwhelmed. *Id.* at ¶ 33. Put shortly, it saves lives. *Id.* Evidence shows that social distancing is working, proving that the public health orders have a real and substantial relation to the crisis. The doubling rate of COVID-19 in Colorado has slowed to a linear growth rate, instead of an exponential growth rate. *Id.* ¶ 9.

Houses of worship are settings within which transmission of COVID-19 is known to occur. Ex. 2, ¶¶ 41–58. There is significant mixing of people from different age groups within houses of worship, and therefore a high potential for very vulnerable individuals, particularly those over 60, to mix with younger individuals (who are more likely to be asymptomatic) and potentially be exposed to COVID-19. *Id.* at ¶¶ 42–49, 48. Houses of worship are a location that may present a greater risk of exposure for older, more vulnerable adults. *Id.* Certain customs and rituals observed at many houses of worship, including singing, may also increase transmission. *Id.* at ¶¶ 50–52. Further, the duration of services and density of people within a house of worship results in an increased risk of transmission. *Id.* at ¶¶ 53–57. Many of these concerns also apply to similar settings. *Id.* at ¶ 59. For example, movie theaters, performance theaters, concert halls, music halls, and opera halls all involve people being stationary, in close contact, for an extended duration. *Id.* The disease transmission risks described above also apply to these other settings. *Id.* Each of these other settings is closed at this stage of the Safer at Home reopening. *Id.*

Plaintiffs now argue that the Orders substantially burden their First Amendment rights because indoor gatherings at houses of worship must be treated the same as an outdoor protest. This argument fails for two reasons. *First*, the Orders do not permit or encourage the protests. Ex. 10 § I.J.1. Nor have State Defendants permitted or encouraged the protests. The protests have erupted in Denver and across the country in a spontaneous, grassroots fashion. Due to the risk of COVID-19, the Orders do not presently allow mass gatherings, and therefore do not create an exception for the protests. Because of the risk of COVID-19 transmission at these gatherings, CDPHE has issued guidance urging those present at protests to take measures to avoid transmission and to get tested. But CDPHE's cautionary guidance does not amount to an official policy exempting the protests from the Orders. *Second*, Plaintiffs incorrectly conclude, without citation to science or source, that indoor and outdoor gatherings carry the same risk of COVID-19 transmission. [Doc. 34 ¶ 7.] To the contrary, as Dr. Herlihy attests, an outdoor setting poses a *lower* risk of transmission than an indoor setting because the respiratory droplets primarily responsible for spreading the disease are more likely to be quickly dispersed outdoors. Ex. 2, ¶ 76. In addition, temperature extremes and sunlight decrease virus survival times outdoors. *Id.*

The restrictions imposed by the Orders are directly proportionate to the threat posed by COVID-19. States are best suited to evaluate responses to public crises and impose restrictions to protect their residents. It is for this reason that courts defer to state elected officials on issues of public health. *South Bay*, 2020 WL 2813056 at *1–2; *Jacobson*, 197 U.S. at 30; *Lawrence*, 2020 WL 2737811 at *9. The Colorado General Assembly entrusted this decision-making authority to the State Defendants, who ultimately are in the best position to make these difficult and complex

public health decisions. *See* C.R.S. § 25-1.5-102(1)(a)(I), (1)(b)(I)–(II), (1)(c). And while bystanders may second guess the State Defendants’ decisions or attempt to substitute their own judgment because in their opinion, these methods are “perhaps, or possibly[,] not the best[,]” *Jacobson*, 197 U.S. at 31, 35, the Supreme Court recognizes that it is not appropriate for courts to overrule a state’s public health decisions on that basis. *Id.* at 30–35.

Under *Jacobson*, Colorado has the power and discretion to protect its residents’ health and safety. Because Plaintiffs cannot clear the bar set forth in *Jacobson*, their claims fail, and they should be denied a temporary restraining order and preliminary injunction.

B. Alternatively, the emergency orders do not violate Plaintiffs’ First Amendment rights to free exercise of religion, and they have not suffered an irreparable injury.

1. Plaintiffs fail to show the Orders harm their First Amendment free exercise rights.

As Chief Justice Roberts’ concurrence in the *South Bay* order makes clear, the *Jacobson* framework governs here, and Plaintiffs’ requests for temporary and injunctive relief should be denied for the reasons stated above. Alternatively, even if Plaintiffs’ claims are analyzed under the standard of review applied in non-emergency circumstances, Plaintiffs fail to show a likelihood of success. The Orders are valid, content neutral laws of general applicability and therefore do not violate Plaintiffs’ right to free exercise of religion. Plaintiffs contend the Orders violate their right to the free exercise of religion because the inability to convene together in a group larger than 50 substantially burdens their religious exercise. [Doc. 34 at ¶¶ 41–42; Doc. 35 at 6.] These allegations fail to state a free exercise violation.

“While the First Amendment provides absolute protection to religious thoughts and beliefs, the free exercise clause does not prohibit Congress and local governments from validly regulating religious conduct.” *Grace United Methodist Church v. City of Cheyenne*, 451 F.3d 643, 649 (10th Cir. 2006) (citing *Reynolds v. United States*, 98 U.S. 145, 164 (1878)). Neutral rules of general applicability normally do not raise free exercise concerns even if they incidentally burden a particular religious practice or belief. *Id.* (citing *Emp’t Div. v. Smith*, 494 U.S. 872, 879 (1990)). Where state action does not “infringe upon or restrict practices because of their religious motivation” and does not “in a selective manner impose burdens only on conduct motivated by religious belief,” it does not violate the First Amendment. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 533, 543 (1993); *see also S. Bay United Pentecostal Church v. Newsom*, 20-55533, 2020 WL 2687079, at *1 (9th Cir. May 22, 2020). A neutral, generally applicable law “need only be rationally related to a legitimate governmental interest to survive a constitutional challenge.” *Corder v. Lewis Palmer Sch. Dist. No. 38*, 566 F.3d 1219, 1232 (10th Cir. 2009) (quotations omitted). On the other hand, if a law that burdens a religious practice is not neutral or generally applicable, it is subject to strict scrutiny, and the burden on religious conduct violates the Free Exercise Clause unless it is narrowly tailored to advance a compelling governmental interest. *Church of the Lukumi Babalu*, 508 U.S. at 546.

Plaintiffs argue that strict scrutiny should apply. They originally claimed that because the Orders exempted a range of commercial and nonreligious activities from the then-10-person limit on in-person gatherings—including, for example, exceptions for conducting business at marijuana dispensaries, liquor stores, hardware stores, laundromats, banks, law offices, and

accounting offices—while barring mass gatherings at places of worship, they are neither neutral nor generally applicable.²⁰ [Doc. 1 ¶ 17; Doc. 3 at 16.]

As Colorado continued expanding the range of activities allowable under the Orders in response to changing conditions with the pandemic, Plaintiffs got the relief they originally sought. In their original complaint they asserted that “[t]he Orders have the effect of prohibiting a gathering of 50 worshipers in HPHC’s sanctuary – even if all of those worshipers observe social distancing requirements – while at the very same time allowing hundreds of people in the Lowes down the road.” [Doc. 1 ¶ 22.] Those 50 worshipers can now worship together under the revised Orders.

Now, Plaintiffs claim that “it is perfectly legal for thousands of protesters to march and stand shoulder-to-shoulder for hours on end, all the while ignoring any semblance of social distancing, assuming, apparently, the message of the protest is one approved by Governor Polis and Director Ryan.” [Doc. 35 at 3.] They claim that the orders should be struck down because the State Defendants “permitted and even encouraged these protest gatherings while continuing to impose draconian restrictions on religious gatherings.” *Id.*

But the Orders are both neutral and generally applicable. The exemptions to the Orders exist for public health reasons, not for the purposes of targeting houses of worship for a non-public health purpose. Gatherings at concert halls, movie theaters, and places of worship present unique challenges that are not present in the exempted businesses, as discussed below and in Dr.

²⁰ Plaintiffs do not aver the State Defendants have a history of animus toward religion or religious people or that the Orders were motivated by any such animus.

Herlihy’s affidavit. *See* Ex. 2, ¶ 59. None of these types of gatherings are exempted from the Orders. *Id.* This overall approach to the Orders—allowing certain businesses to operate where public health risks may be reduced by precautionary measures while prohibiting a class of gatherings where public health risks are much greater—provides the proper framework for the constitutional analysis.

Unsurprisingly, Plaintiffs have provided no evidence the Orders target religion. Indeed, the Orders prohibit similar secular gatherings where people typically gather together in larger numbers. Ex. 10 at 6–7; § II.A.3. And the Orders permit Plaintiffs to worship collectively in multiple ways consistent with public health principles. They may worship at a place of worship in groups of up to 50, including even more meetings of up to 50 in the same building, at the same time, in different rooms. Plaintiffs may also host and attend drive-in services in parking lots or similar venues. Plaintiffs also may broadcast ceremonies online, as it appears they have done since mid-March 2020.²¹

Plaintiffs assert that the Governor and CDPHE’s Executive Director both permitted the protests to occur and actively encouraged them. [Doc. 34 ¶¶ 36–37.] But they provide no support for these bald statements. To the contrary, the Orders show that protestors have not been granted an exception. The Sixth Amended Order provides that “[g]atherings or events of more than 10 people” are “not authorized to occur” unless exempted. Ex. 10 § I.J.1. The Orders do not authorize the protests.

²¹ *See Calendar*, High Plains Harvest Church, <https://www.highplainsharvest.org/church-life/calendar/>.

While CDPHE has issued guidance to those present at any type of protest, that guidance does not encourage engaging in protest. Ex. 12. Rather, in keeping with CDPHE’s role as a public health agency, the guidance provides people with information on keeping themselves and their communities safer should they choose to engage in protest activities. *Id.* Consistent with other CDPHE’s COVID-19 guidance, it advises maintaining physical distancing, wearing masks, and testing after possible exposure. *Id.*

The Orders plainly do not allow the protest activity. And Plaintiffs have failed to supply this Court with a single document or statement showing the State Defendants took a position contrary to the Orders. At the most, the information Plaintiffs cite shows the immense challenges governments face in responding to spontaneous demonstrations involving thousands of people wishing to peaceably assemble and protest during an ongoing public health crisis. Those challenges have caused struggles at all levels of government, as shown through recent litigation in this Court. *See Abay v. Denver*, No. 20-cv-01616-RBJ, 2020 WL 3034161 at *1 (D. Colo. June 5, 2020) (granting temporary restraining order to enjoin the Denver Police Department and law enforcement acting in concert with them “from employing chemical weapons or projectiles of any kind against persons engaging in peaceful protests or demonstrations”). Under these circumstances, and in light of everything Colorado has done to protect its citizens from the spread of COVID-19, it can hardly be said that the protests were “permitted” or “encouraged.”

As a result, the Orders are neutral and of general applicability. *See, e.g., Legacy Church, Inc. v. Kunkel*, CIV 20-0327 JB\SCY, 2020 WL 1905586, at *33–34 (D.N.M. Apr. 17, 2020) (New Mexico restriction on gatherings of over five people was neutral and of general applicability); *Cassell*, 2020 WL 2112374 at *9 (same, as to Illinois restriction on gatherings of

over ten people). As such, the Orders do not violate the Plaintiffs' free exercise rights so long as they are supported by a rational basis. *Corder*, 566 F.3d at 1232. As discussed above, the Orders, have a rational basis in slowing the spread of COVID-19 in Colorado. Consequently, Plaintiffs cannot show the Orders violate Plaintiffs' right to freely exercise religion.

Even if strict scrutiny were to apply, the Orders are constitutional. To satisfy strict scrutiny, the State Defendants must demonstrate that the Orders are narrowly tailored to further a compelling government interest. *Grace United Methodist Church*, 451 F.3d at 649. Here, Plaintiffs concede that the State Defendants have identified a compelling government interest in addressing the COVID-19 pandemic, but challenge whether the Orders serve this purpose. As set forth in the declarations of Drs. France and Herlihy, the Orders are designed expressly to slow the growth of COVID-19 and thus serve that purpose. Plaintiffs offer no evidence to the contrary.

The Orders are also narrowly tailored. First, the Orders do not restrict religious activity beyond what is necessary to achieve this compelling interest. Ex. 10 at 11–12; § II.M; Ex. 11 at 1–2. That the Orders permit certain types of businesses to carry on in different ways, subject to certain restrictions, does not render the Orders too loosely restrictive. “The government need not choose between doing nothing in the face of a pandemic and closing all of society. It may choose a middle ground, provided that it does so ‘without reference to the content of the regulated’ activity.” *Legacy Church*, 2020 WL 1905586, at *36 n.12 (quoting *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 48, (1986) (holding even if strict scrutiny applied, New Mexico’s five-person limit on gatherings did not violate plaintiff’s free exercise right)). The Orders satisfy that test by prohibiting mass gatherings without reference to those gatherings’ content. In other

words, the Orders prohibit indoor in-person religious services in groups over 50 not because of those services’ religious nature, but rather because large indoor gatherings where people are in close proximity are exactly the type of environments in which a highly contagious disease proliferates. Accordingly, even if the Orders were subject to strict scrutiny, Plaintiffs are nonetheless unlikely to succeed on their free exercise claim’s merits.

2. Because there is no harm to Plaintiffs’ First Amendment free exercise rights, there is no irreparable harm.

For First Amendment claims, “the irreparable harm factor ‘merges’ with the likelihood of success, such that if the plaintiff shows he is likely to succeed on the merits, he has simultaneously proven he will suffer an irreparable harm.” *Legatus v. Sebelius*, 901 F. Supp. 2d 980, 997 (E.D. Mich. 2012) (citing *McNeilly v. Land*, 684 F.3d 611, 620–21 (6th Cir. 2012)). Because Plaintiffs fail to state a First Amendment harm, there is no irreparable injury.

C. Plaintiffs’ viewpoint discrimination claim lacks merit.

Plaintiffs’ burden to prove viewpoint discrimination is “demanding.” *Pahls v. Thomas*, 718 F.3d 1210, 1230 (10th Cir. 2013). They must prove each defendant acted with a “viewpoint discriminatory purpose” and undertook a course of action “*because of*, not merely in spite of, the action’s adverse effects upon an identifiable group.” *Id.* (quotation omitted) (emphasis in original). Viewpoint discrimination occurs only “when the government *targets* not subject matter, but particular views taken by speakers on a subject.” *Id.* at 1229 (emphasis added).

An inference of discriminatory intent cannot be drawn by simply pointing to a discriminatory effect because “disparate impact alone is not enough to render a speech restriction content- or viewpoint-based.” *Id.*

Plaintiffs have presented no evidence, nor can they, that the State Defendants discriminated against Plaintiffs because of Plaintiffs' viewpoint. The Orders' restrictions are not based on viewpoint or content. They apply equally to both religious services and similar secular events like concerts and conferences. In fact, despite the similarities to concerts and conferences, houses of worship have been permitted to remain open throughout the pandemic, and Plaintiffs may worship indoors in groups up to 50 people. To the extent the Orders provides other exceptions for certain businesses, those are based on public health and safety factors, not the content of the message or the viewpoint of the speaker. The Orders' restrictions continue to apply to mass gatherings outdoors, including the protests, and do not contain special exemptions for certain types of protests based on the viewpoints of protesters. *Cf. Calvary Chapel Lone Mountain*, No. 2:20-cv-00907-RFB-VCF at 8 (denying injunction where plaintiff church failed to show selective enforcement of public health order against places of worship despite presence of ongoing mass protests). Plaintiffs fail to meet their high burden here.

D. The Orders do not violate Plaintiff's free speech rights.

Plaintiffs are not entitled to relief on their First Amendment free speech claim (Claim II). As an initial matter, their Motions do not address this claim, and it is therefore not at issue in this request for injunctive relief. [See Doc. 35.] Regardless, Plaintiffs are unlikely to succeed on this claim because they have not identified any speech or expressive conduct that is targeted by the Orders. The Orders impose reasonable limits on the number of individuals who may gather at one time, while allowing other avenues for Plaintiffs to convene and worship, including in-person gatherings, online or television broadcast, and drive-in services. *See* Ex. 10 at 11–12; § II.M; Ex. 11 at 1–2. Plaintiffs have not alleged an “expressive element” to gatherings of over

50 people. As another federal court held recently, “[i]t is unclear what the ‘particularized message’ of gathering specifically in groups larger than ten would be, and as the Court cannot discern what the message would be, it is doubtful that the message would be ‘understood by those who viewed it.’” *Lighthouse Fellowship Church v. Northam*, 2:20CV204, 2020 WL 2110416, at *11 (E.D. Va. May 1, 2020) (quoting *Texas v. Johnson*, 491 U.S. 397, 404, (1989)). Therefore, the Orders do not restrict expressive conduct within the First Amendment’s guarantee of freedom of speech.

Even if the Orders have an incidental impact on some expressive conduct of Plaintiffs, the Supreme Court has held that where a state’s regulation is not related to expression but merely incidentally impacts expression, it “is sufficiently justified if it is within the constitutional power of the Government; if it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest.” *United States v. O'Brien*, 391 U.S. 367, 376 (1968); *see also Lighthouse Fellowship Church*, 2020 WL 2110416, at *11. Here, the Orders are well within the State Defendants’ authority,²² the state interest—preserving human life—is unrelated to the suppression of free expression, and the scope of the Orders “is no greater than that which is essential to further the interests of slowing the spread of a deadly pandemic and preserving human life.” *See id.* at *12. Plaintiffs cannot succeed on this claim.

²² See above at page 17, n.19.

E. The emergency orders do not violate equal protection under the Fourteenth Amendment.

Plaintiffs fail to support the bare claim that they were not afforded equal protection. Again, as an initial matter, Plaintiffs’ motions for a TRO and preliminary injunction do not address their equal protection claim (Claim IV) and it is therefore not at issue. The Fourteenth Amendment’s Equal Protection Clause provides that “[n]o State shall ... deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1. “‘Equal protection is essentially a direction that all persons similarly situated should be treated alike.’” *Curry v. Buescher*, 394 F. App’x 438, 446–47 (10th Cir. 2010) (quoting *Abdulhaseeb v. Calbone*, 600 F.3d 1301, 1322 n.10 (10th Cir. 2010)). “Conversely, while a state ‘must treat like cases alike,’ it ‘may treat unlike cases accordingly.’” *Id.* (quoting *Coalition for Equal Rights, Inc. v. Ritter*, 517 F.3d 1195, 1199 (10th Cir. 2008)).

Plaintiffs fail to demonstrate they were treated worse relative to any similarly situated entities or offer any other explanation as to how an equal protection violation supposedly occurred. Plaintiffs’ sole substantive allegation directed to this count states that “in the Orders the State treats Plaintiffs differently from other similarly situated businesses and non-religious entities on the basis of the exercise of their fundamental rights.” [Doc. 34 ¶ 57.] The complaint has no allegations demonstrating that (1) religious entities are treated differently from similarly situated businesses; or (2) that the reason for any difference was on the basis of their religious practice. To the contrary, religious institutions are treated similarly under the Orders to other businesses and entities with which they share characteristics. The inquiry here is not simply

whether other businesses are open. Instead, the question is whether other businesses with a similar risk profile for disease transmission are open. They are not.

As described in this briefing and the attached declarations, houses of worship tend to be places where people remain stationary for longer periods of time. Ex. 2, ¶¶ 41–59. Unlike grocery and hardware stores, at which people primarily experience transient interactions, people in houses of worship interact inside for longer periods of time, increasing their exposure to COVID-19. Locations that share these characteristics include movie and performance theaters, opera houses, concert halls, and music halls. *See id.* at ¶ 59. Each of these locations is closed under the Orders. Ex. 10 at 6–7; § II.A.3. Unlike each of these other settings, houses of worship have been permitted to remain open since the inception of public health restrictions.

Plaintiffs fail to sufficiently allege an equal protection violation and provide no evidence in support of such a claim. When reviewed against the evidence provided with this opposition, Plaintiffs have failed to demonstrate a likelihood that they can prevail on this claim. As such, the Court should deny the motion for a temporary restraining order and preliminary injunction.

CONCLUSION

The State Defendants have acted to protect the health of Colorado residents and slow the spread of the pandemic consistent with their authority. Plaintiffs have not identified any constitutional violation, let alone one that would justify disregarding the public health warnings of virtually every state, national, and international public health body. The State Defendants “are actively shaping their response to changing facts on the ground,” by monitoring data and carefully loosening restrictions to maximize opportunities to worship consistent with public

health. *South Bay*, 2020 WL 2813056 at *2. The Court should refuse to grant a temporary restraining order or preliminary injunction.

Dated: June 12, 2020

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CERTIFICATE OF SERVICE

I certify that I served the foregoing STATE DEFENDANTS' OPPOSITION TO PLAINTIFFS' RENEWED MOTION FOR TEMPORARY RESTRAINING ORDER AND FOR PRELIMINARY INJUNCTION upon all parties herein by e-filing with the CM/ECF system maintained by the Court, this 12th day of June, 2020 addressed as follows:

Barry K. Arrington
Arrington Law Firm
3801 E. Florida Ave., Suite 830
Denver, CO 80210
barry@arringtonpc.com

s/ Leslie Bostwick

Leslie Bostwick

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:20-cv-01480-RM-MEH

High Plains Harvest Church, and
Mark Hotaling,

Plaintiff,

v.

Jared Polis, in his official capacity as Governor of the State of Colorado, and
Jill Hunsaker Ryan, in her official capacity as Executive Director of the Colorado Department of
Public Health and Environment,

Defendants.

DECLARATION OF ERIC FRANCE, M.D.

This Declaration is submitted in support of the State Defendants' opposition to Plaintiffs' request for a temporary restraining order and preliminary injunction.

I. Identity of Declarant

A. Background and Education

1. I am a medical doctor and the Chief Medical Officer of the Colorado Department of Public Health and Environment. I have practiced medicine for 31 years.

2. As Chief Medical Officer, my duties include all functions of public health for CDPHE, including disease control, emergency preparedness, the state laboratory, hospital facilities and EMS licensing, prevention services, environmental epidemiology and informatics.

3. I have a Bachelor of Arts from Northwestern University, a Doctor of Medicine from McGill University, a Master of Science in Public Health from the University of Colorado, and Master of Business Administration from the University of Denver.

4. I completed my residencies in pediatrics and preventive medicine at the University of Colorado. I am board certified in Preventive Medicine/Public Health and Pediatrics.

B. Prior Experience

5. For 25 years, I worked for the Colorado Permanente Medical Group, the physicians of Kaiser Permanente. I was a physician researcher (in the areas of vaccines, cancer screening, and tobacco cessation), the Chief of Preventive Medicine, the Director of Population Health, and the Executive Director for Sales & Marketing. While at Kaiser Permanente, I oversaw vaccination programs, which included preparing for influenza pandemics and creating care plans during times of staff and supply shortages.

6. I have also served as the west region Medical Director for Merck Vaccines.

II. Relevant Orders

7. I have reviewed Exhibit 3 to the Opposition. Exhibit 3 is a true and accurate copy of Executive Order D 2020 044, Safer at Home.

8. I have reviewed Exhibit 4 to the Opposition. Exhibit 4 is a true and accurate copy of Third Amended Public Health Order 20-28, Safer at Home.

9. I have reviewed Exhibit 5 to the Opposition. Exhibit 5 is a true and accurate copy of the CDPHE Guidance for Places of Worship.

10. I have reviewed Exhibit 6 to the Opposition. Exhibit 6 is a true and accurate copy of Executive Order D 2020 079, Amending and Extending D 2020 044, Safer at Home.

11. I have reviewed Exhibit 7 to the Opposition. Exhibit 7 is a true and accurate copy of Fourth Amended Public Health Order 20-28, Safer at Home.

III. COVID-19

A. COVID-19 is a serious disease.

12. COVID-19 is a respiratory illness caused by a novel coronavirus, called severe acute respiratory syndrome coronavirus 2, which is abbreviated as SARS-CoV-2. Symptoms include fever, cough, shortness of breath, or difficulty breathing.

13. Most individuals recover from COVID-19 by resting, drinking plenty of liquids, and taking pain and fever-reducing medications. But the illness can be severe and require hospitalization.

14. Current data indicates that about 80% of COVID-19 cases are mild. A mild COVID-19 case is defined as any case that does not require hospitalization. Even a mild case may result in an individual being unable to work or leave the house for a week or more.

15. The same data indicates that 15% of COVID-19 cases are severe, and 5% of cases are critical.

16. A severe COVID-19 case requires hospitalization, often for pneumonia. The infected individual will likely require oxygen therapy and intravenous fluids.

17. A critical COVID-19 case can involve multiple organ failure and require ventilator support for respiratory failure. The best available data indicates that 70% of individuals requiring a ventilator will not survive.

18. COVID-19 is more serious than the seasonal flu. Only 1%–2% of flu cases require hospitalization. In contrast, the COVID-19 hospitalization rate is about 10 times that of the flu. Moreover, the average length of a hospital stay for COVID-19 is nearly twice as long as the average stay for the flu.

19. COVID-19 is deadlier than the flu. The seasonal flu kills about one of every thousand infected individuals. Death from COVID-19 is seen in 2-3% of all persons testing positive for this disease. COVID-19 may be 10 times as deadly as the seasonal flu.

B. COVID-19 is widespread.

20. As of May 27, 2020, there are 24,767 known cases of COVID-19 in Colorado. However, testing for COVID-19 is not yet common. It is estimated that about 170,000 Coloradans are or have been infected with COVID-19.

21. As of May 27, 2020, 4,196 Coloradans have been hospitalized and 1,135 Coloradans have died from COVID-19.

22. As of May 27, 2020, 60 counties in Colorado have reported cases of COVID-19.

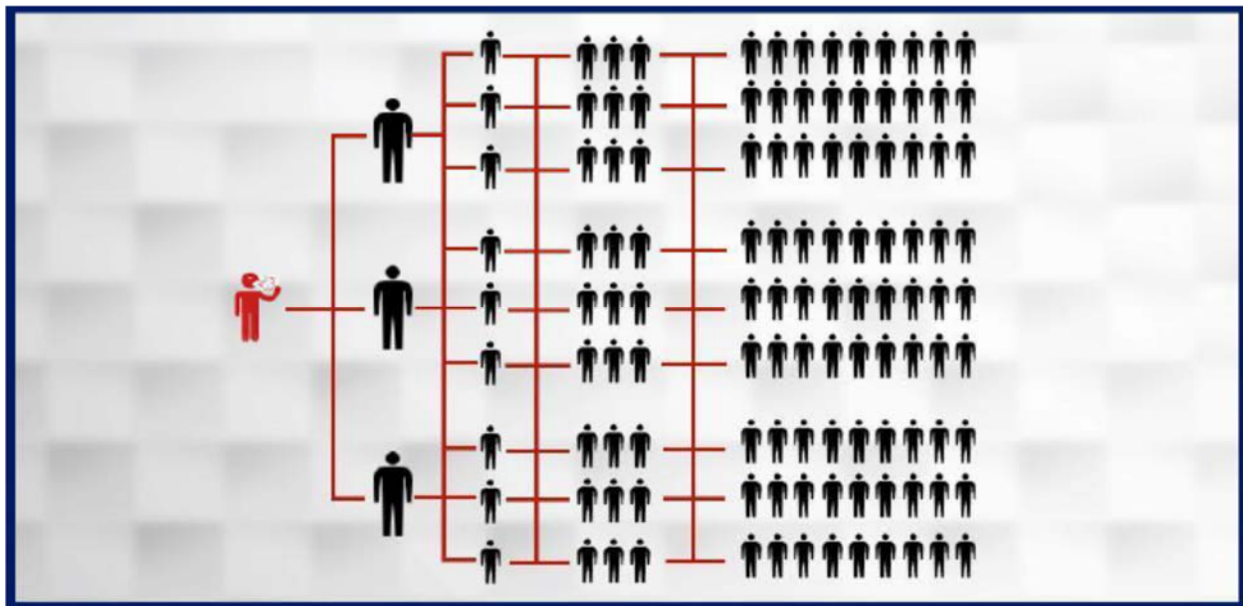
23. All 50 states and the District of Columbia have reported cases of COVID-19, and they all have reported community spread of COVID-19. Community spread means the disease is spreading without being able to identify the source of the infection.

24. As of May 26, 2020, the World Health Organization reports about 5.5 million cases globally, and 349,190 deaths.

25. Nearly every country in the world has reported cases of COVID-19.

C. COVID-19 is highly contagious.

26. Information from the ongoing COVID-19 pandemic suggest that this virus is spreading more efficiently than influenza. Current data estimates that COVID-19 is nearly twice as contagious as the seasonal flu. Each infected person may infect 3 other people. A single infected individual can result in the infection of 81 other people in the span of 3 weeks. The diagram below illustrates the exponential growth of COVID-19:



27. COVID-19 is primarily spread by small droplets, such as those produced when someone coughs or sneezes. COVID-19 may also spread when an individual touches their face after touching a contaminated surface.

28. Infected individuals are contagious before they become symptomatic and can spread infection in the two days before they become ill. Additionally, some individuals never become symptomatic. This makes it difficult for public health officials to conduct contact-tracing or to isolate the infected. Current data indicates that 20%–40% of all infections were spread by asymptomatic individuals.

29. COVID-19 infection is particularly deadly for older adults. In Colorado, five out of ten hospitalizations, and nine out of ten deaths, have occurred in adults over the age of 60. The death rate from infection increases with age, with 20% of those aged 65 to 74 dying from COVID-19. That rate climbs to 41% for those older than 85.

IV. Treatment of COVID-19

30. There is no proven treatment for COVID-19, though there are promising anti-viral medicines now becoming available in limited quantities. For the majority, supportive care must be provided to infected individuals, such as intravenous fluids, oxygenation, and medication to support other bodily functions.

31. Although a flu vaccine is both available and effective in preventing some of the most dangerous types of the flu, there is no COVID-19 vaccine available at this time.

V. Social Distancing is necessary to prevent overwhelming the healthcare system.

32. Social distancing is a type of nonpharmaceutical intervention (NPI). It is intended to deliberately increase the physical space between people to reduce the spread of infectious diseases.

33. Social distancing also can diminish a surge of infected individuals seeking medical care. A large surge in the number of persons with serious infections can compromise the ability of the healthcare system to deliver necessary healthcare to the public. If the healthcare system is overrun, the disease will become more fatal and cause more deaths because fewer individuals will be able to obtain the care they need. Once the healthcare system is overrun, deaths from non-COVID-19 causes will also increase because fewer individuals will be able to obtain care for all conditions.

34. Evidence from previous pandemics, such as the 1918–1919 influenza pandemic, indicates that NPIs, like social distancing, can mitigate the consequences of a pandemic. This includes reducing the total number of deaths.

35. Without a public health intervention, a model from the University of Colorado predicted almost 50,000 persons would need an ICU bed on May 11, 2020, but state capacity is roughly 1,800 beds, and there is no ability to expand the number of beds to meet this potential need. Persons needing an ICU bed and a ventilator would die without this care. The model estimated our state would have over 80,000 deaths in 2020 should no public health intervention be implemented.

36. To combat these potential impacts, the Governor and CDPHE put a number of measures into place. These included restricting visitors at nursing facilities and similar settings; closing restaurants, bars, theaters, gyms, casinos, and personal services; and eventually putting the Stay at Home Order in place, which tried to get people to stay at home as much as possible.

37. After implementing these measures, Colorado successfully slowed the rate at which COVID-19 was spreading. The rate at which the number of cases was doubling lengthened from 2–3 days in late March to 6–12 days by mid-April. The rate of increase slowed even more as a result of the Stay at Home orders, with the state eventually achieving a reduction of 75–80% in social distancing.

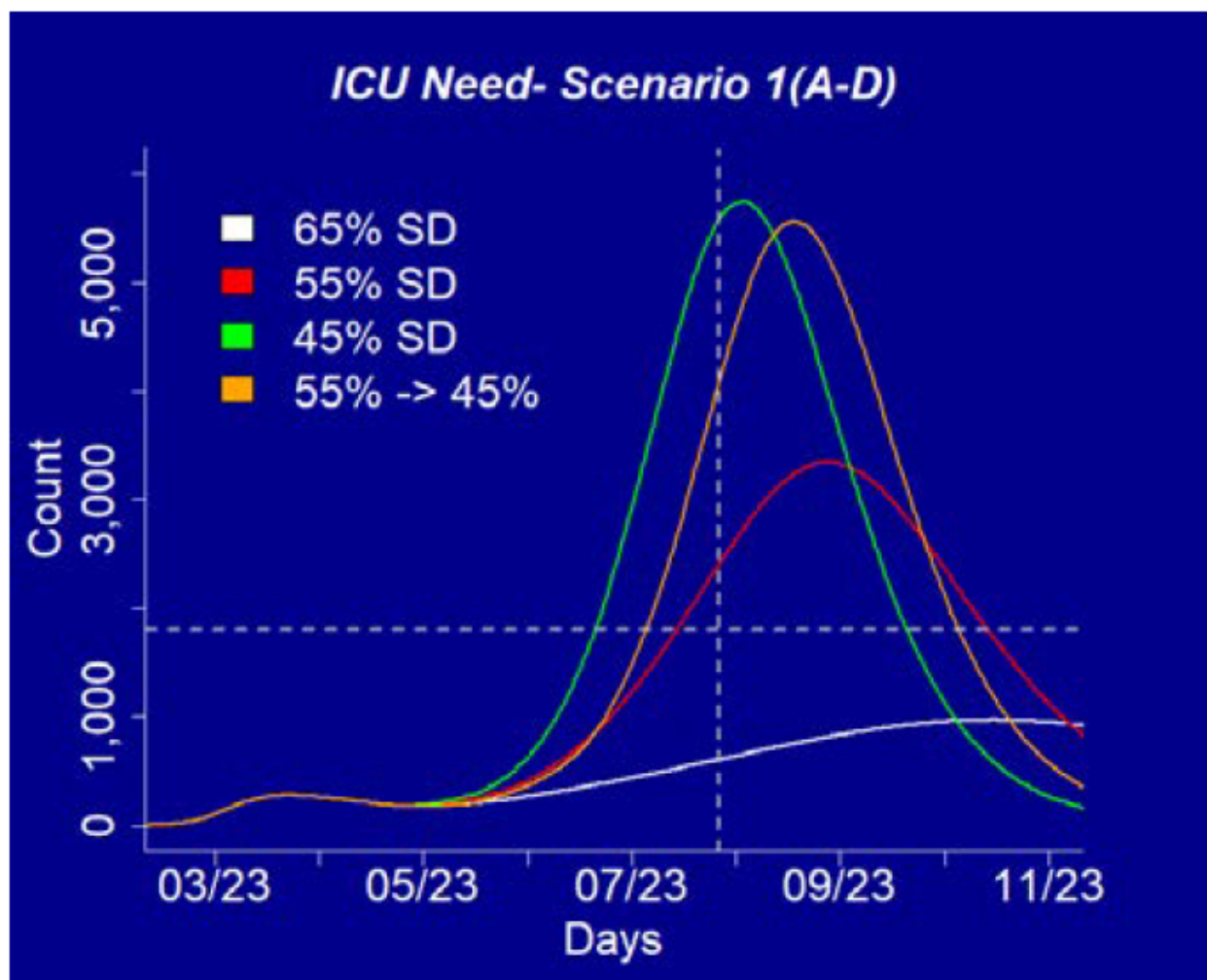
38. On April 26, 2020, Public Health Order 20-28, Safer at Home, was issued. This Public Health Order started the process of transitioning from a Stay at Home model to a Safer at Home model. Safer at Home still requires that vulnerable individuals stay at home, but allows limited reopening of postsecondary institutions and certain businesses. More activities were allowed under that version of Safer at Home, but restrictions such as social distancing remained in place to reduce the likelihood of disease transmission.

39. Public Health Order 20-28 was amended on May 4, 8, 14, and 26, 2020. With each amendment, restrictions were eased on additional businesses or sectors. This practice of

gradually easing restrictions is designed to avoid resumption of exponential spread of COVID-19.

40. Although we have achieved significant results, Colorado still faces a public health crisis from the presence of COVID-19.

41. The chart below illustrates the current problem. The horizontal dashed line represents the available ICU bed capacity in Colorado. The chart represents four different scenarios. The first three involve all citizens achieving a 65%, 55%, and 45% reduction in social distancing indefinitely. The final scenario involves all citizens maintaining a 55% reduction until June 26, and then reducing to 45% indefinitely. As the data shows, only maintaining 65% social distancing will prevent a new curve that exceeds ICU capacity, which is projected to happen by July 8 in the worst scenario.



VI. The Public Health Orders are necessary.

42. Colorado is experiencing a pandemic that threatens the health of residents, risks overwhelming the healthcare system, and threatens the economy of the state. The Public Health Orders are necessary to combat this pandemic.

43. The Public Health Orders were not issued because of a large number of COVID-19-related deaths. Instead, the Public Health Orders were issued to *prevent* a large number of deaths.

44. Between March 10 and 26, Colorado experienced exponential growth in cases and hospitalizations.

45. During this time, the number of cases in the state was doubling every two to three days. At that rate, we expected tens of thousands of new cases without intervention.

46. As Colorado experienced a steep increase in the growth rate of cases, the State began to implement measures to limit the spread of the virus. These included social distancing measures, such as school, restaurant, and some business closures. Ultimately, the State imposed the Stay at Home measures to limit social interactions. This resulted in a decrease in social interactions of 75–80%

47. As a result of these measures, the rate of increase slowed. Rather than experiencing exponential growth, the rate eventually became a linear increase and then eventually decreased.

48. Despite these achievements, Colorado is still in the midst of a public health emergency.

49. One primary strategy with Safer at Home is to open settings gradually, and to evaluate the results of those reopenings by monitoring case and surveillance data. A gradual reopening is also critical as we learn how to best manage this unprecedented event. As we follow hospitalizations across the state and open up new settings, thereby increasing social contacts, we know that case counts will increase.

50. Settings where people are in close contact for an extended duration of time, such as churches, stadiums, concert halls, music halls, opera halls, movie theaters, and performance theaters represent an increased risk of disease transmission. For these reasons, the reopening of these venues has happened later in the reopening process after the reopening of other settings that may have less risk.

51. One main goal for a gradual reopening is to avoid a resurgence in viral spread, where we could again experience exponential growth and a doubling rate of 2–3 days. It is also critical to prevent cases from exceeding hospital capacity and running out of ventilators, getting children back into school in the fall, and to avoid having to return to a Stay at Home model.

52. The primary tools to avoid this increase in growth rate are policies to decrease physical interactions and slow virus spreads.

53. Absent the careful use of these strategies and interventions, Colorado could face a second peak of COVID-19 pandemic by late summer.

* * *

I declare under penalty of perjury that the foregoing is true and correct.

Eric France, M.D.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:20-cv-01480-RM-MEH

High Plains Harvest Church, and
Mark Hotaling,

Plaintiff,

v.

Jared Polis, in his official capacity as Governor of the State of Colorado, and
Jill Hunsaker Ryan, in her official capacity as Executive Director of the Colorado Department of
Public Health and Environment,

Defendants.

DECLARATION OF RACHEL HERLIHY, M.D.

This Declaration is submitted in support of the State Defendants' opposition to Plaintiffs' renewed request for a temporary restraining order and preliminary injunction (the Renewed Opposition).

I. Identity of Declarant

A. Background and Education

1. I am a medical doctor and the State Epidemiologist with the Colorado Department of Public Health and Environment (CDPHE). I have practiced medicine for 14 years.

2. As the State Epidemiologist, my duties include providing clinical, epidemiologic, and administration leadership to the Communicable Disease Branch of CDPHE. I collect and analyze population health data; design, implement, and evaluate evidence-based public health programs; and identify and investigate routine and emerging public health threats.

3. I have a Bachelor of Science in Bacteriology, Medical Microbiology, and Immunology from the University of Wisconsin, a Doctor of Medicine from the University of Wisconsin Medical School, and a Master of Public Health from the Johns Hopkins Bloomberg School of Public Health.

4. I completed my residencies in preventive medicine at the Johns Hopkins General Preventive Medicine Residency Program and an internal medicine internship at the University of Virginia Internal Medicine Residency Program. I am board certified in preventive medicine and general public health.

B. Prior Experience

5. I have worked for CDPHE since November of 2011. During that time, I served in numerous capacities, including as the Immunization Section Chief, managing the Department's Immunization Section; the Deputy Director and Director for the Department's Division of Disease Control and Environmental Epidemiology; and now as the State Epidemiologist.

6. I also worked for the Utah Department of Health where I served as the Assistant Manager of the Communicable Disease Epidemiology Program and eventually as the Deputy State Epidemiologist.

7. I was also the Deputy Director for the Department of Defense's Infectious Disease Clinical Research Program and Assistant Professor of Preventive Medicine at the Uniformed Services University of Health Sciences.

8. Finally, I was an Embassy Science Fellow at the U.S. Embassy in Vientiane, Laos where I participated in various avian/pandemic influence preparedness and response activities. As a Fellow, I investigated an outbreak of Hepatitis A in a rural Lao community.

II. COVID-19

A. COVID-19 is a serious disease.

9. COVID-19 is a respiratory illness caused by a novel coronavirus, called severe acute respiratory syndrome coronavirus 2, which is abbreviated as SARS-CoV-2. Symptoms include fever, cough, shortness of breath, or difficulty breathing.

10. Most individuals recover from COVID-19 by resting, drinking plenty of liquids, and taking pain and fever-reducing medications. But the illness can be severe and require hospitalization. Approximately 80% of COVID-19 cases are mild, not requiring hospitalization. An additional 15% of COVID-19 cases are severe, requiring hospitalization, and another 5% of cases are critical, which requires artificial ventilation.

11. In Colorado, five out of ten hospitalizations, and nine out of ten COVID-19 deaths have occurred in those over the age of 60. The risk of death from COVID-19 increases with age. Recent data shows that 20% of those 65 to 74 died from COVID-19 infection. That rate increases to 41% for those old than 85.

B. COVID-19 is widespread.

12. As of June 11, 2020, there are 28,647 known cases of COVID-19 in Colorado. It is estimated that about 170,000 Coloradans are or have been infected with COVID-19. Availability of COVID-19 testing is increasing, but undertesting and underreporting continue to occur.

13. At the present time, and on any given day, an estimated 1 in 300 Coloradoans are contagious with COVID-19.

14. As of June 11, 2020, 5,057 Coloradans have been hospitalized and 1,339 Coloradans have died from COVID-19.

15. As of June 11, 2020, 60 counties in Colorado have reported cases of COVID-19.

16. All 50 states and the District of Columbia have reported cases of COVID-19, and they all have reported community spread of COVID-19. Community spread means the disease is spreading without being able to identify the source of the infection.

17. As of June 11, 2020, the World Health Organization reports about 7.1 million cases globally, and 408,025 deaths.

18. Nearly every country in the world has reported cases of COVID-19.

19. During the time that Stay at Home was in place, the evidence indicates that social distancing reduced the exponential growth of COVID-19 cases in the state. Over the period of March 26–April 7, 2020, COVID-19 case growth averaged 300-400 per day, a linear growth rather than the expected exponential growth seen in a pandemic.

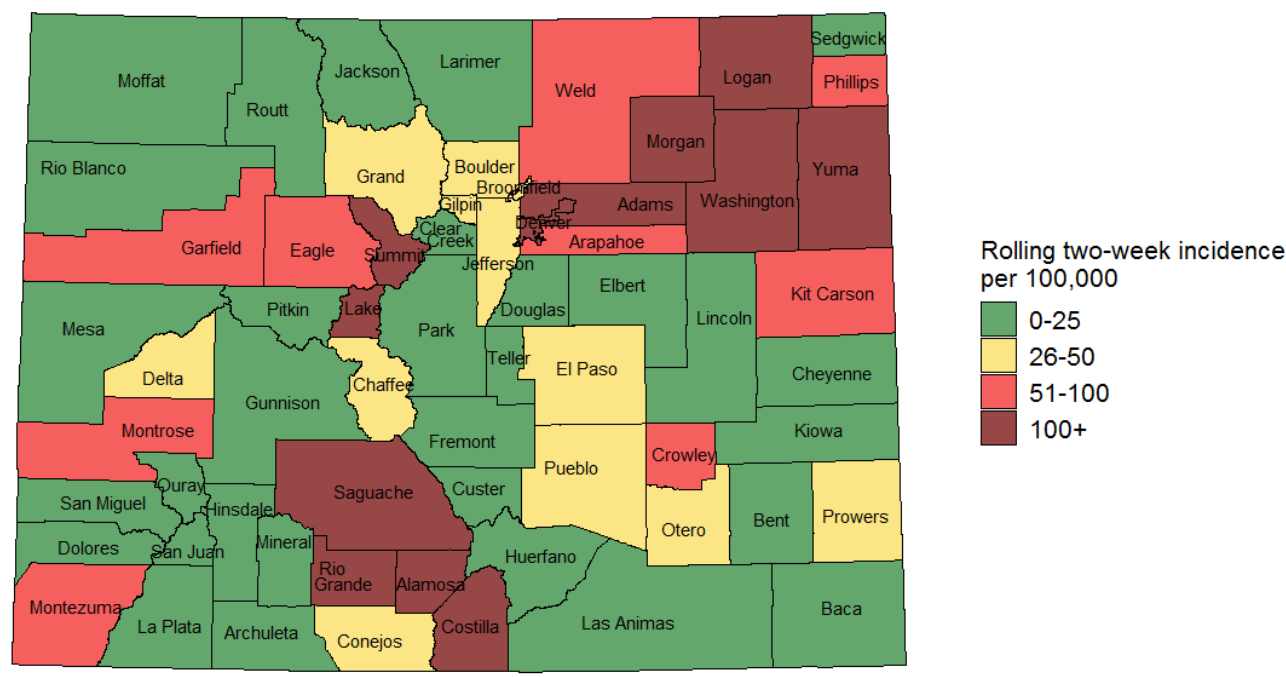
20. Modeling by the University of Colorado estimates that social contacts decreased by 52% after the first phase of social distancing orders, implemented March 13–23, 2020. During the Stay at Home phase, decreases in social distancing of 80% were achieved.

C. COVID-19 in Weld County.

21. The incidence of COVID-19 infection in Weld County is 837 cases per 100,000 population.

22. The incidence of COVID-19 infection in the State of Colorado overall is 497 cases per 100,000 population.

23. This map shows the incidence of COVID-19 by county over the past two weeks. This information demonstrates the recent burden of disease and strain on the healthcare system:



24. As this data shows, the current burden of disease in Weld County is higher than in most other counties in the rest of state

25. This means that someone in Weld County would be more likely to acquire COVID-19 infection than in other counties in Colorado.

26. Colorado currently has a variance process through which counties can ask to relax various aspects of the Safer at Home orders. The level at which a house of worship can open depends on the disease burden in the county requesting the variance. Based on the current disease burden in Weld County, houses of worship would be able to open with a cap of 50 congregants if they met all other requirements in the variance process, and if the variance was approved. Weld County has not requested a variance.

D. COVID-19 is highly contagious.

27. Information from the ongoing COVID-19 pandemic suggests that this virus is spreading more efficiently than influenza. Current data estimates that COVID-19 is nearly twice as contagious as the seasonal flu. On average, without control measures in place, each infected person may infect 3 other people. A single infected individual can result in the infection of 81 other people in the span of 3 weeks.

28. COVID-19 is primarily spread by small droplets, such as those produced when someone coughs or sneezes. COVID-19 may also spread when an individual touches their face after touching a contaminated surface.

29. Infected individuals are contagious before they become symptomatic and can spread infection in the two days before they become ill. Additionally, some individuals never become symptomatic. This makes it difficult for public health officials to conduct contact-tracing or to isolate the infected. Currently, 35% of infections are estimated to be asymptomatic. Current data also suggests that 40% of transmission occurs before symptom onset.

E. Epidemiological non-pharmaceutical interventions.

30. Non-pharmaceutical interventions (NPIs) are actions, apart from getting vaccinated and taking medicine, that people and communities can take to help slow the spread of illnesses like COVID-19.

31. Traditional NPIs include: social distancing; temporary closings of child care centers, schools, places of worship, sporting events, concerts, festivals, conferences, and other settings where people gather; contact tracing to determine the source of infectious outbreaks; isolation and quarantine of those infected or suspected of being infected; and other daily measures such as wearing masks and gloves in public, washing your hands often, and disinfecting work spaces and other highly trafficked areas.

32. Social distancing is intended to deliberately increase the physical space between people to reduce the spread of infectious diseases.

33. The goal of social distancing is to prevent a surge of infected individuals seeking medical care. A large surge in the number of persons with serious infections can compromise the ability of the healthcare system to deliver necessary healthcare to the public. If the healthcare system is overrun, the disease will become more fatal and cause more deaths because fewer

individuals will be able to obtain the care they need. Once the healthcare system is overrun, deaths from non-COVID-19 causes will also increase because fewer individuals will be able to obtain care for all conditions.

34. Evidence from previous pandemics, such as the 1918–1919 influenza pandemic, indicates that NPIs, like social distancing, can mitigate the consequences of a pandemic. This includes reducing the total number of deaths.

35. The strategy for the Stay at Home and Safer at Home orders was to implement these traditional NPIs to contain the outbreak and prevent further infection spread. Based on available data, this included temporary closing and reopening certain settings where people gather.

36. CDPHE has engaged in modeling to determine what interventions make the most sense at each stage of the pandemic response. Those models state that our communities must achieve 65% social distancing. This means that we must reduce the average number of contacts between Coloradoans by 65%. To achieve this goal, we can have some interactions, but must limit or reduce others, in order to avoid overwhelming the healthcare system.

37. There is a finite amount of social interaction that can happen while still staying at or below 65% social distancing, and preventing the healthcare system from being overrun. Policy makers must decide how to ease restrictions while maintaining 65% social distancing.

38. The goals for implementing these strategies are to slow down the spread of the virus so that we don't exceed hospital capacity and run out of ventilators, get kids back into school in the fall, and prevent having to return to Stay at Home.

39. Part of the Safer at Home strategy is to make gradual changes and then evaluate data to see how those changes are affecting the spread of the virus. Changes are more frequent in this phase than they were in Stay at Home.

40. At this time, monitoring disease burden and surveillance data is constant, and adjustments and reopenings are driven by changes in that data.

III. Houses of Worship in Colorado

A. Unique factors for houses of worship.

41. There have been identified outbreaks that have occurred in houses of worship and similar settings, both inside and outside of the United States. Houses of worship are a setting within which transmission of COVID-19 is known to occur.

42. One unique aspect of houses of worship is that there is significant mixing of people from different age groups within this setting.

43. There is data from the time and contact survey that is conducted nationally. The U.S. Bureau of Labor Statistics American Time Use Survey (<http://bls.gov/tus/>) survey shows that a substantial amount of contact that older adults have with younger children occurs on Sundays in house of worship settings. This means that there is a significant proportion of intergenerational mixing in these settings.

44. Young children and young adults are much more likely than older adults to have asymptomatic infection. The probability of symptoms in those aged 0 to 29 is 18%, which means that approximately 80% of those under 30 are asymptomatic.

45. Because those younger individuals wouldn't necessarily be showing symptoms, the individuals or their parents would not know to stay home and not go to a house of worship.

46. In addition, these asymptomatic individuals cannot be identified in screening by the houses of worship themselves.

47. In other words, it is nearly impossible for a house of worship to identify an asymptomatic individual infected with COVID-19 and subsequently prevent that individual from attending a religious service.

48. Asymptomatic infection also makes contact tracing very difficult, because people cannot readily identify the source of their infection if their source was asymptomatic.

49. Because of the significant mixing that occurs in worship settings, there is a high potential for very vulnerable individuals, particularly those over 60, to mix with younger individuals and potentially be exposed to COVID-19.

50. Customs in houses of worship may also result in increased contact. For example, shaking hands, observing Eucharist, passing a basket, or showing a sign of the peace may all place people in closer contact than they would be in other settings.

51. These customs, where observed, increase risk of transmission of COVID-19.

52. Singing has also been demonstrated as a route of transmission. Choirs and other singing in houses of worship have been identified as a source of infection and transmission.

53. Typically, the risk of transmission increases the longer that you are in contact with someone.

54. In a grocery store, hardware store, or similar setting, individuals have contact with one another transiently.

55. By contrast, individuals in a school, house of worship, or other assembly hall, are in contact with one another for an extended period of time. That extended period of time in contact results in an increased risk of transmission.

56. Occupancy data shows that houses of worship and other types of assembly spaces tends to have higher occupancy limits than other types of settings. Fire codes permit a higher density of occupancy in these settings. Houses of worship are settings where more individuals tend to congregate than in similar settings, and for longer periods of time. Individuals may also feel compelled or obligated to attend religious services in a way that they do not in other settings.

57. Social distancing during a worship service itself is not the only potential route of transmission in a house of worship. Consideration must also be given to entrances and exits, child care facilities, classrooms, bathrooms, and high touch surfaces throughout the facility. Spacing individuals apart during the worship service will not address these other routes of transmission.

58. National data (<https://www.pewforum.org/religious-landscape-study/age-distribution/>) shows that individuals aged 65 or older are more likely to attend religious services

at least once a week than those in other age groups. 48% of individuals over the age of 65 attest that they attend a religious service at least once a week versus 27% for those between the ages of 18-19, 33% for those between 30-49, and 38% for those between 50-64. This means that houses of worship are a location that may present a greater risk of exposure for older, more vulnerable adults.

59. Many of these concerns also apply to other settings. For example, movie theaters, performance theaters, sporting events with spectators, concert halls, music halls, and opera halls all involve people being stationary, in close contact, for an extended duration. The disease transmission risks described above also apply to these other settings. Each of these other settings is also closed at this stage of the Safer at Home reopening.

B. House of Worship Restrictions in Colorado

60. In Colorado, houses of worship have been permitted to operate as critical since the beginning of the pandemic response though with restrictions.

61. From the first Stay at Home Public Health Order, the orders have stated that '[h]ouses of worship may remain open, however, these institutions are encouraged to implement electronic platforms to conduct services whenever possible to conduct smaller (10 or fewer congregants), more frequent services to allow strict compliance with Social Distancing Requirements.

62. On June 1, 2020, the Governor issued Executive Order D 2020 091, Safer at Home and in the Vast, Great Outdoors. I have reviewed Exhibit 8 to the Renewed Opposition. Exhibit 8 is a true and accurate copy of Executive Order D 2020 091.

63. In connection with Executive Order D 2020 091, CDPHE issued Fifth Amended Public Health Order 20-28 (Fifth Amended PHO) on June 2, 2020. I have reviewed Exhibit 9 to the Renewed Opposition. Exhibit 9 is a true and accurate copy of the Fifth Amended PHO. The order was issued pursuant to the Governor's directive in Executive Order D 2020 091.

64. In this Fifth Amended PHO, houses of worship are allowed to open to 50% of the posted occupancy limit indoors not to exceed 50 people, whichever is less, while meeting the six feet physical distancing requirements in every direction. Any additional rooms in a house of worship may host up to 10 people implementing six feet distancing requirements.

65. For outdoor worship services, a house of worship must maintain six feet distance between non-household members and work with the appropriate local authority to obtain approval for the maximum numbers of individuals who may attend in the designated outdoor space.

66. In connection with the Fifth Amended PHO, CDPHE issued proposed guidance on houses of worship. CDPHE provided the public with an opportunity to provide comments on the proposed guidance.

67. On June 4, 2020, CDPHE issued final guidance on houses of worship. I have reviewed Exhibit 11 to the Renewed Opposition. Exhibit 11 is a true and accurate copy of CDPHE's guidance on houses of worship.

68. On June 5, 2020, CDPHE issued Sixth Amended Public Health Order 20-28 (Sixth Amended PHO). I have reviewed Exhibit 10 to the Renewed Opposition. Exhibit 10 is a

true and accurate copy of the Sixth Amended PHO. The Sixth Amended PHO incorporated the same restrictions on houses of worship as was implemented in the Fifth Amended PHO.

69. Due to the unique factors associated to houses of worship, this guidance is necessary to prevent the spread of infection during services.

IV. The George Floyd Protests and Public Health

70. CDPHE recognizes racism as a threat to public health and stands with the American Public Health Association which similarly recognizes racism as a public health issue. Racial inequality has made people of color more susceptible to contracting COVID-19, and ultimately, dying to the virus. Due to this inequality, people of color have limited access to affordable health care, childcare, and transportation.

71. On May 28, 2020, after the death of George Floyd at the hands of Minneapolis police, spontaneous protests erupted in Denver, and around the world, including at the public grounds in front of the state capitol and surrounding area.

72. CDPHE has not encouraged people to join any protests on any subject matter.

73. Instead, CDPHE has issued guidance to people who choose to protest on any matter. The guidance encourages all participants—protestors, law enforcement personnel, and members of the media—to follow certain guidance to stay safer and protect themselves from COVID-19 transmission if present at the protests or demonstrations. I have reviewed Exhibit 12 to the Renewed Opposition. Exhibit 12 is a true and accurate copy of CDPHE’s guidance on safely participating in protests.

74. As part of this guidance, CDPHE has encouraged social distancing, wearing masks, and for everyone who participates in protests, to monitor themselves for COVID-19 symptoms. These NPIs are no different than those required for outdoor worship services.

75. CDPHE does not have statutory authority and is not equipped to physically intervene or restrain any protest or other mass gathering.

76. From an epidemiological standpoint, there is likely a lower risk of transmission outdoors versus indoors because the respiratory droplets primarily responsible for spreading the disease are more likely to be quickly dispersed outdoors. Additionally, in outdoor environments, temperature extremes and sunlight decrease virus survival times.

V. Public Health Interventions are Still Necessary

77. Current data continues to show a beneficial effect from the Stay at Home measures with the R0 below 1. This means that, on average, each infected person is infecting fewer than one additional people. This also signals that the current wave of the pandemic is decelerating or has plateaued due to the implementation of social distancing and other disease control strategies.

78. We are just beginning to have indication as to effects of Safer at Home; more time needed to estimate the full effect of the current measures with modeling.

79. We need to continue to have a gradual reopening so that we have time for data to come in that shows the effect those reopenings are having. The goal of the gradual reopenings is

to prevent the pandemic from accelerating again, prevent exceeding hospital capacity and running out of ventilators, get kids back to school in the fall, and avoid having to return to a Stay at Home model.

80. Future disease burden depends on degree of distancing maintained in the coming months and the extent to which older people maintain greater distancing.

81. Absent use of all strategies, Colorado could face a second peak by late summer.

* * *

I declare under penalty of perjury that the foregoing is true and correct.

Rachel Herlihy, M.D.

JARED POLIS
GOVERNOR



136 STATE CAPITOL
DENVER, COLORADO 80203

TEL 303-866-2471
FAX 303-866-2003

D 2020 044

EXECUTIVE ORDER

Safer at Home

Pursuant to the authority vested in the Governor of the State of Colorado and, in particular, pursuant to Article IV, Section 2 of the Colorado Constitution and the relevant portions of the Colorado Disaster Emergency Act, C.R.S. § 24-33.5-701, *et seq.*, I, Jared Polis, Governor of the State of Colorado, hereby issue this Executive Order continuing stay at home requirements for vulnerable individuals and permitting the limited reopening of postsecondary institutions and certain business operations due to the presence of coronavirus disease 2019 (COVID-19) in Colorado.

I. Background and Purpose

On March 5, 2020, the Colorado Department of Public Health and Environment's (CDPHE) public health laboratory confirmed the first presumptive positive COVID-19 test result in Colorado. Since then, the number of confirmed cases has continued to climb, and there is community spread throughout the State. I verbally declared a disaster emergency on March 10, 2020, and on March 11, 2020, I issued the corresponding Executive Order D 2020 003, as amended by Executive Orders D 2020 018 and D 2020 032. On March 25, 2020, I requested that the President of the United States declare a Major Disaster for the State of Colorado, pursuant to the Stafford Act. The President approved that request on March 28, 2020.

My administration, along with other State, local, and federal authorities, has taken a wide array of actions to mitigate the effects of the pandemic, prevent further spread, and protect against overwhelming our health care resources.

The virus that causes COVID-19 is spread primarily by close contact between people and through respiratory droplets when an infected person coughs or sneezes. It can also be spread through contact with contaminated surfaces. Public health experts recommend we practice social distancing, or maintaining a physical distance of six (6) feet or more from other people, as a way to slow the spread of COVID-19. Evidence shows that social distancing and the Stay at Home Executive Order D 2020 017, as amended, have helped to slow the increase of cases and rate of infection.

While we have seen indications that our efforts to "flatten the curve" are working, transmission of the virus continues to threaten Coloradans' way of life and livelihoods. As we take steps to return Coloradans to work, we must continue to practice social distancing at a high level and implement other measures, such as limiting our social interactions, taking extra precautions for Vulnerable Individuals and wearing non-medical masks while in public, to

facilitate a step towards reopening the economy while protecting public health. While this is a first step toward resuming our daily lives, the State is monitoring the spread of COVID-19 and additional precautions may be necessary in the future.

This Executive Order implements a number of measures that will allow many Coloradans to return to work while we maintain a sustainable level of social distancing. In particular, this Executive Order continues Social Distancing Requirements for all Coloradans and stay at home requirements for Vulnerable Individuals, permits the limited reopening of postsecondary institutions and certain business operations, and orders the Executive Director of CDPHE to amend or issue public health orders (PHO) consistent with the directives in this Executive Order.

II. Directives

- A. Pursuant to Executive Order D 2020 041, normal in-person instruction at all P-12 schools in Colorado will be suspended until the scheduled end of the 2019-2020 regular school year. P-12 schools and school districts may use school buildings for providing services to students, educators, and families, including but not limited to: in-person small group instruction; staff professional development; food service; access to internet, devices, or instructional materials; special education services; or mental health supports. P-12 schools and school districts intending to provide these services must work in coordination with their local public health agency and must observe Social Distancing Requirements pursuant to applicable public health orders.
- B. I direct the Executive Director of the Colorado Department of Higher Education (CDHE) to work with CDPHE to identify those programs and courses at postsecondary institutions that cannot be taught remotely and require limited in-person instruction.
- C. All Vulnerable Individuals should Stay at Home, except when necessary to provide, support, perform, or operate Necessary Activities, Minimum Basic Operations, Critical Government Functions, Necessary Travel, or Critical Businesses, provided that Vulnerable Individuals cannot be compelled to perform in-person work for any business or government function, including a Critical Business or Critical Government Function.
- D. For purposes of this Executive Order, Vulnerable Individuals means:
 - 1. Individuals who are 65 years and older;
 - 2. Individuals with chronic lung disease or moderate to severe asthma;
 - 3. Individuals who have serious heart conditions;
 - 4. Individuals who are immunocompromised;

-
5. Pregnant women; and
 6. Individuals determined to be high risk by a licensed healthcare provider.
- E. I direct all individuals who are sick or who test positive for COVID-19 to Stay at Home except as necessary to care for themselves or seek medical care.
- F. I direct employers to accommodate workers with childcare responsibilities and workers who live in the same household as a Vulnerable Person to the greatest extent possible by promoting telecommuting or other remote work options, flexible schedules, or other means.
- G. I direct the Colorado Civil Rights Division within the Department of Regulatory Agencies and CDPHE to provide guidance to prevent discrimination in the workplace related to COVID-19. Employers must provide reasonable accommodation and are prohibited from discriminating against employees who are showing symptoms of COVID-19 or who have been in contact with a known positive case of COVID-19.
- H. I direct the Executive Director of CDPHE to issue a new or amended PHO consistent with the directives in this Executive Order. The new or amended PHO must:
1. Advise Coloradans to wear non-medical cloth face coverings that cover the nose and mouth whenever in public;
 2. Order Coloradans to limit:
 - i. Social interactions to the greatest extent possible except as required to conduct Necessary Activities; and
 - ii. Essential Travel to within their county of residence or employment as much as possible and recreational travel to no further than ten (10) miles from their residence.
 3. Prohibit public gatherings of ten (10) persons or more in both public spaces and private commercial venues.
 4. Strongly encourage all Critical Businesses, Critical Government Functions, Non-Critical Retail, and Non-Critical Commercial Businesses to allow workers to telecommute whenever possible.
 5. Require all Critical Businesses, Critical Government Functions, Non-Critical Retail, and Non-Critical Commercial Businesses to make work accommodations for Vulnerable Individuals, who remain subject to Stay at Home requirements. Employers must also be encouraged to make

accommodations for individuals living in the same household as a Vulnerable Individual, and for individuals with childcare responsibilities.

6. Permit all Critical Businesses and Critical Government Functions to continue to operate with mandatory Social Distancing Requirements and cleaning protocols.
 7. Permit Non-Critical Retail to operate and offer goods through delivery service, window service, walk-up service, drive-through service, drive-up service, curbside delivery, and, beginning May 1, 2020, permit Non-Critical Retail to allow customers onto their premises in a manner allowing for strict compliance with mandatory Social Distancing Requirements similar to the requirements for Critical Retail.
 8. Permit Places of Public Accommodation to continue to offer food and beverage using delivery service, window service, walk-up service, drive-through service, drive-up service, curbside delivery or any manner set forth in an existing Executive Order or PHO and in accordance with mandatory Social Distancing Requirements.
 9. Issue appropriate guidelines for classes and programs identified in consultation with the Executive Director of CDHE pursuant to paragraph II.B., above.
 10. Beginning on May 4, 2020, permit Non-Critical Commercial Businesses to allow up to fifty percent (50%) of their employees to conduct in-person work that takes place outside a private residence in accordance with Mandatory Social Distancing Requirements and protocols.
 11. Ensure that Critical Businesses, Critical Government Functions, Non-Critical Commercial Businesses, and Non-Critical Retail with over fifty (50) employees in any one location follow protocols established by PHO, including but not limited to symptom screening and temperature check stations, closure of common areas, cleaning protocols, and Mandatory Social Distancing Requirements and protocols.
- I. Any new or amended PHO issued pursuant to this Executive Order must identify or develop:
1. Mandatory Social Distancing Requirements and protocols to be implemented by all employers, identifying any specific protocols for certain employers based on the nature of their work, including proper face and hand coverings to be used;

-
2. An amended definition of Vulnerable Individual consistent with this Executive Order; and
 3. Operations requirements for Non-Critical Retail and Critical Retail.
- J. I direct the Executive Director of the Colorado Department of Labor and Employment (CDLE) to promulgate and issue temporary emergency rules to amend the Colorado Health Emergency Leave with Pay Rules found in 7 CCR 1103-10 to cover individuals returning to work under this Executive Order and to extend paid sick leave coverage to up to two-thirds pay for fourteen (14) days if a worker has tested positive for COVID-19, has COVID-like symptoms, or has been directed to quarantine or isolation due to COVID-19 concerns.
- K. I direct the Executive Director of CDLE to promulgate and issue temporary emergency rules pursuant to C.R.S. § 8-73-108(4)(c) and guidance to ensure that workers, and particularly workers who are Vulnerable Individuals, are not in danger of losing unemployment insurance eligibility for refusal to return to COVID-19-related demonstrable, unsafe working conditions.
- L. Terms in this Executive Order, including Stay at Home, Necessary Activities, Minimum Basic Operations, Critical Government Functions, Necessary Travel, Critical Businesses, Places of Public Accommodation, Critical Retail, Social Distancing Requirements, and Vulnerable Individuals have the meaning as defined in PHO 20-24 and PHO 20-22, as amended, or any PHO issued pursuant to this Executive Order.
- M. Any county wishing to apply for a local variance from part or all of this Executive Order must submit a written application to CDPHE certifying that the county has low case counts of COVID-19 cases or can document fourteen (14) consecutive days of decline in COVID-19 cases reported in the county. The application must include a written COVID-19 suppression plan approved by the appropriate local public health authority, all hospitals within the county (unless no hospitals are located in the county), and a majority of the county commissioners, or, in the case of the City and County of Denver, the mayor of Denver, or, in the case of the City and County of Broomfield, the city council.
- N. CDPHE shall review and approve a county-specific COVID-19 suppression plan that meets CDPHE's public health standards. CDPHE shall not provide COVID-19 preparedness grant funding to any county that implements measures that are less restrictive than the standards contained in this Executive Order if the county did not first obtain approval from CDPHE to adopt such less restrictive standards.
- O. Nothing in this Executive Order prevents a county or municipality from adopting more protective standards than those contained in this Executive Order as

Executive Order D 2020 044

April 26, 2020

Page 6 of 6

necessary, including but not limited to stay at home orders, mask wearing requirements in public, or additional protective measures. If adopted, such measures shall take effect in the county or municipality without the need for further approval by the State.

1. Except as modified by this Executive Order, all Executive Orders issued due to COVID-19 that are currently in effect shall remain in full force and effect as originally promulgated.

III. Duration

This Executive Order shall expire thirty (30) days from April 27, 2020, unless extended further by Executive Order.



GIVEN under my hand and
the Executive Seal of the
State of Colorado, this
twenty sixth day of April,
2020

A handwritten signature in blue ink that reads "Jared Polis".

Jared Polis
Governor



COLORADO
Department of Public
Health & Environment

THIRD AMENDED PUBLIC HEALTH ORDER 20-28 SAFER AT HOME
May 14, 2020

PURPOSE OF THE ORDER

I issue this Amended Public Health Order (PHO or Order) pursuant to the Governor's directive in **Executive Order D 2020 044 Safer at Home** in response to the existence of thousands of confirmed and presumptive cases of Coronavirus disease 2019 (COVID-19) and related deaths across the State of Colorado. Further, as there is substantial evidence of community spread of COVID-19 throughout the State, it is crucial to take measures now that can mitigate further spread of disease in our communities.

FINDINGS

1. Governor Polis issued Executive Order D 2020 003 on March 11, 2020, declaring a disaster emergency in Colorado due to the presence of COVID-19. Since that time, the Governor has taken numerous steps to implement measures to mitigate the spread of disease within Colorado, and has further required that several public health orders be issued to implement his orders.
2. I have issued public health orders pertaining to the limitation of visitors and nonessential individuals in skilled nursing facilities, intermediate care facilities, and assisted living residences; closing bars and restaurants to in-person services; defining the terms of the Governor's stay at home requirements and critical business designations; requiring hospitals to report information relevant to the COVID-19 response; and requiring the wearing of face coverings in the workplace and urging their use in public. These measures all act in concert to reduce the exposure of individuals to disease, and are necessary steps to protect the health and welfare of the public. Additionally, in reducing the spread of disease, these requirements help to preserve the medical resources needed for those in our communities who fall ill and require medical treatment, thus protecting both the ill patients and the healthcare workers who courageously continue to treat patients.
3. As of April 25, 2020, there are 13,441 known cases of COVID-19 in Colorado; however, testing for COVID-19 is not yet common. As of April 25, 2020, 2,438 Coloradans have been hospitalized and 680 Coloradans have died from COVID-19. Multiple sources of data show that COVID-19 transmission and the use of healthcare due to COVID-19 have leveled off in

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Colorado. Our work to “flatten the curve” appears to be succeeding, and the Governor has ordered some lessening of the current stay at home restrictions as a result.

4. **Executive Order D 2020 044** authorizes transitioning from a stay at home model, as described in **Executive Order D 2020 017** and **Public Health Order 20-24** as amended, to a **Safer at Home** model. **Safer at Home** still requires that **Vulnerable Individuals** remain at home, but allows limited reopening of postsecondary institutions and certain businesses. Additionally, individuals are encouraged to stay at home as much as possible and practice Social Distancing to reduce the likelihood of disease transmission, but certain activities, such as gathering in groups of no more than ten for activities, are permitted. As we continue to combat COVID-19 in our communities, continuing restrictions on individual travel and necessary activities remain appropriate.

INTENT

This Order sets forth the requirements for implementation of Safer at Home, as directed by Governor Polis. Individual restrictions remain in place concerning limitations on activities, travel, and public gatherings. Workplace restrictions remain necessary to implement standard Social Distancing Requirements, cleaning standards, and other items necessary to reduce the possibility of disease spread. Additionally, certain businesses and activities require specific guidance based on their business practices, and those are included in the appendices to this Order.

ORDER

Unless otherwise specifically noted in this Order, the requirements of this Order are effective April 27, 2020. This Order supersedes and replaces Public Health Orders 20-22 and 20-24, as amended.

I. **Safer at Home**

A. All individuals currently living within the State of Colorado are encouraged to stay at home and avoid unnecessary interactions whenever possible in order to reduce the spread of disease. Individuals living in shared or outdoor spaces must at all times, to the greatest extent possible, comply with **Social Distancing Requirements**, defined in Section III below, and are encouraged to leave their residences only to perform or utilize **Necessary Activities**, defined in Section III below.

B. Individuals are urged to wear non-medical cloth face coverings that cover the nose and mouth whenever in public as required by **Executive Order D 2020 044**.

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C. All public and private gatherings are limited to no more than ten (10) individuals, except for the purposes expressly permitted in this PHO, which include **Necessary Activities**. Nothing in this Order prohibits the gathering of members living in the same residence.

D. People at high risk of severe illness from COVID-19 are urged to stay in their residence at all times except as necessary to seek medical care. **Vulnerable Individuals** cannot be compelled to work for any business or government function, including a Critical Business or Critical Government Function, during the pendency of this pandemic emergency. People who are sick must stay in their residence at all times except as necessary to seek medical care, and must not go to work, even for a **Critical Business**, defined in Section III below.

E. Individuals experiencing symptoms of COVID-19 must self-isolate until their symptoms cease or until they have a negative test result. Due to limited testing availability and narrow criteria for testing, if an individual has tested positive for COVID-19 and/or has developed symptoms of COVID-19, including early or mild symptoms (such as cough and shortness of breath), they should be in isolation (staying away from others) until they have had no fever for at least seventy-two (72) hours (that is three full days of no fever without the use of medicine that reduces fevers), other symptoms have improved (such as cough or shortness of breath) and at least ten (10) days have passed since symptoms first appeared.

F. Governmental and other entities are strongly urged to make shelter available to people experiencing homelessness as soon as possible and to the maximum extent practicable, and are authorized to take all reasonable steps necessary to provide non-congregate sheltering along with necessary support services to members of the public in their jurisdiction as necessary to protect all members of the community. People experiencing homelessness are urged to protect their health and safety by complying with **Social Distancing Requirements** at all times.

G. Individuals are encouraged to limit travel to **Necessary Travel**, defined in Section III below, including but not limited to, travel by automobile or public transit. People must use public transit only for purposes of performing **Necessary Activities** or to travel to and from work to operate **Businesses** or maintain **Critical Governmental Functions** as authorized in Section II of this Order. People riding on public transit must comply with **Social Distancing Requirements** to the greatest extent feasible.

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H. Individuals may participate in local and personal recreation in outside public spaces, as an authorized **Necessary Activity**, in groups no larger than 10 and practicing social distancing maintaining 6 feet between participants. Travel for recreational purposes should be limited to your own community like your county of residence or traveling no more than about 10 miles. Playgrounds, playground equipment, pools, amusement parks and arcades remain closed. Personal training and classes in any setting are limited to all members of a single household or a mixed group of 4 or fewer individuals complying with **Social Distancing Requirements**; except for members of a single household, sharing equipment is prohibited.

II. Business Requirements

A. The following places of public accommodation remain closed to ingress, egress, use, and occupancy by members of the public:

1. Restaurants, food courts, cafes, coffeehouses, and other similar places of public accommodation offering food or beverage for on-premises consumption;
2. Bars, taverns, brew pubs, breweries, microbreweries, distillery pubs, wineries, tasting rooms, special licensees, clubs, and other places of public accommodation offering alcoholic beverages for on-premises consumption;
3. Cigar bars;
4. Gyms, except for the limited purpose authorized in Section I.H;
5. Movie and performance theaters, opera houses, concert halls, and music halls;
6. Casinos; and
7. Horse tracks and simulcast facilities, also known as off-track betting facilities.

These restrictions do not apply to any of the following:

1. Room service in hotels;
2. Health care facilities, residential care facilities, congregate care facilities, and juvenile justice facilities;
3. Crisis shelters or similar institutions;
4. Airport concessionaires;
5. Institutions of higher education offering dining hall services located in or adjacent to campus dormitories that are accessed through student, staff, faculty, or campus associated identification, as well as grab and go food services within these institutions, while exercising social distancing measures of at least six feet between individuals;

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6. Fitness centers and nonessential personal services included in residential facilities, such as hotels, apartment or condominium complexes or similar housing arrangements, that are limited to use only by hotel guests or residents of the housing who are following social distancing requirements of at least 6 feet between individuals, and the hotel or property managers are performing frequent environmental cleaning; and
7. Any emergency facilities necessary for the response to these events.

B. All Critical Businesses and Critical Government Functions, as defined in Section III below, may continue to operate. **Critical Businesses** must comply with **Social Distancing Requirements** at all times, adopt work from home or tele-work policies for any operations that can be done remotely, and implement other strategies, such as staggered schedules or re-designing workplaces, to create more distance between workers unless doing so would make it impossible to carry out critical functions. **Critical Businesses** that serve the public such as grocery stores and other **Critical Retail** shall comply with **Social Distancing Requirements** at all times including, but not limited to, when any customers are standing in line. **Critical Business** and **Critical Government Functions** shall continue to promote telecommuting to the greatest extent possible.

C. All places of public accommodation subject to Public Health Order 20-22, as amended, that offer food and beverages may continue to offer food and beverage using delivery service, window service, walk-up service, drive-through service, drive-up service, curbside delivery or any manner set forth in that PHO and in accordance with mandatory **Social Distancing Requirements**, except as prohibited or limited by **Executive Order D 2020 044** or this Order. These entities include restaurants, food courts, cafes, coffeehouses, and other similar places of public accommodation offering food or beverage for on-premises consumption; and bars, taverns, brew pubs, breweries, microbreweries, distillery pubs, wineries, tasting rooms, special licensees, clubs, and other places of public accommodation offering alcoholic beverages.

D. All Non-Critical Retail, as defined in Section III below, may operate and offer goods through delivery service, window service, walk-up service, drive-through service, drive-up service, curbside delivery, or any other manner allowing for strict compliance with mandatory social distancing requirements, similar to the requirements for **Critical Retail**. Additional requirements for **Critical** and **Non-Critical Retail** are contained in **Appendix A** of this Order.

E. All Field Services, including real estate, may resume operations, in accordance with the requirements of this Order including **Appendix B**. Real estate includes in-person real estate showings and marketing services which must adhere to **Social Distancing Requirements** with cleaning and disinfection between each showing, but may not hold open houses.

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F. Other health care services not covered by **Executive Order 20 044 Voluntary or Elective Surgeries Or Procedures**, in certain limited healthcare settings may resume if done in accordance with the requirements of **Appendix E**.

G. Effective May 1, 2020, **Non-Critical Retail** and limited **Personal Services** may resume in-person services if they meet the requirements in Section II.I below and the additional requirements outlined for these services in **Appendices A and D** of this Order.

H. Effective May 4, 2020, the following businesses may reopen in accordance with the requirements of this Order:

1. Non-Critical Office-Based Businesses operating in an office and not a production environment, as defined in Section III below, may allow up to fifty (50) percent of their employees to conduct in-person work that takes place outside a private residence in accordance with the requirements in Section II.I below and the additional requirements outlined in **Appendix C**.

2. Non-Critical Manufacturing operating in a production environment with no more than ten (10) employees that comply with the requirements in Section II.I below and the additional requirements in **Appendix H**.

I. All Business and Government Functions. Critical Businesses, Critical Government Functions, Non-Critical Office-Based Businesses, Personal Services, Limited Healthcare Settings, and Non-Critical Retail shall all follow the protocols below:

1. Employers and sole proprietors shall take all of the following measures within the workplace to minimize disease transmission, in accord with the [CDPHE Guidance](#):

- a. deputize a workplace coordinator(s) charged with addressing COVID-19 issues;
- b. maintain 6 foot separation between employees and discourage shared spaces;
- c. [clean and disinfect](#) all high touch areas;
- d. post signage for employees and customers on good hygiene;
- e. ensure proper ventilation;
- f. avoid gatherings (meetings, waiting rooms, etc) of more than 10 people;
- g. implement symptom monitoring protocols, conduct daily temperature checks and monitor symptoms in employees at the worksite to the greatest extent possible, or if not practicable, through employee self-assessment at home prior to coming to the worksite. A sample form

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can be found [here](#). If an employee reports any symptoms, refer symptomatic employees to the [CDPHE Symptom Tracker](#) and take all of the following steps:

1. send employee home immediately;
 2. increase cleaning in your facility and require social distancing of staff at least 6 feet apart from one another;
 3. exclude employee until they are fever-free, without medication, for 72 hours and 10 days have passed since their first symptom; and
 4. if multiple employees have these symptoms, contact your local health department; and
- h. eliminate or regularly [clean and disinfect](#) any items in common spaces, such as break rooms, that are shared between individuals, such as condiments, coffee makers, vending machines.

2. Employers shall take all of the following measures regarding employees to minimize disease transmission:

- a. require employees to stay home when showing any symptoms or signs of sickness, and connect employees to company or state benefits providers;
- b. provide work accommodations for **Vulnerable Individuals**, who remain subject to **Stay at Home** advisement, prioritizing telecommuting, as **Vulnerable Individuals** shall not be compelled to go to work during the pendency of this pandemic emergency;
- c. provide to the greatest extent possible flexible or remote scheduling for employees who may have child or elder care obligations, or who live with a person who still needs to observe **Stay at Home** due to underlying condition, age, or other factor;
- d. encourage and enable remote work whenever possible;
- e. encourage breaks to wash hands or use hand sanitizer;
- f. phase shift and breaks to reduce density; and
- g. provide appropriate protective gear like [gloves, masks, and face coverings](#) as defined by [OSHA industry standards](#).

3. Employers and sole proprietors shall implement the following measures regarding customers to minimize disease transmission:

- a. create whenever possible special hours for **Vulnerable Individuals** only;
- b. encourage 6 foot distancing inside of the business for all patrons;

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- c. encourage customer use of protection like gloves and face coverings;
 - d. provide hand sanitizer at the entrances to the greatest extent possible; and
 - e. use contactless payment solutions, no touch trash cans, etc. whenever possible.
4. Employers with over fifty (50) employees in any one location shall, in addition to the above requirements, implement the following protocols:
- a. implement employee screening systems that follow the requirements of Section II.I.1.g above in one of the following ways:
 - i. Set up stations at the worksite for symptom screening and temperature checks; or
 - ii. Create a business policy that requires at-home employee self-screening each work day and reporting of the results to the employer prior to entering the worksite;
 - b. close common areas to disallow gatherings of employees;
 - c. implement mandatory cleaning and disinfection protocols; and
 - d. require mandatory adherence to **Social Distancing Requirements**.

J. Work Accommodations. Employers must provide reasonable work accommodations for **Vulnerable Individuals** who are still under the **Stay at Home** advisement, such as telecommuting. Employers are encouraged to provide reasonable work accommodations for individuals who reside with or are caring for **Vulnerable Individuals**, or facing child care needs while schools remain closed.

K. Specific Industry Requirements. Additional requirements for specific industries are included in the following Appendices to this Order:

- 1. Appendix A: Critical and Non-Critical Retail Requirements
- 2. Appendix B: Field Services
- 3. Appendix C: Non-Critical Office-Based Businesses
- 4. Appendix D: Personal Services
- 5. Appendix E: Limited Healthcare Settings
- 6. Appendix H: Non-Critical Manufacturing

III. Definitions

A. Necessary Activities. For purposes of this PHO, individuals are encouraged to only leave their Residence to perform any of the following **Necessary Activities**, provided they comply at all times and to the greatest extent possible with **Social Distancing Requirements**

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below. People at high risk of severe illness from COVID-19 are urged not to leave their residence except as necessary to receive medical care. People who are sick must not leave their residence except as necessary to receive medical care, and must not go to work, even for a

Critical Business. Necessary Activities include:

1. Engaging in activities or perform tasks essential to their health and safety, or to the health and safety of their family or household members, including, but not limited to, pets and livestock, such as, by way of example only and without limitation, obtaining medical supplies, walking your dog, feeding barnyard animals, obtaining durable medical equipment, obtaining medication, visiting a healthcare professional, or obtaining supplies they need to work from home.
2. Obtaining necessary services or supplies for themselves and their family or household members, or to deliver those services or supplies to others, such as, by way of example only and without limitation, food, pet supply, other household consumer products, and products or equipment necessary to maintain the safety, sanitation, and essential operation of a Residence.
3. Engaging in outdoor activity, such as, by way of example and without limitation, walking, hiking, nordic skiing, snowshoeing, biking or running. For purposes of outdoor activity, State parks will remain open to the public who live in the vicinity to engage in walking, hiking, biking, running, and similar outdoor activities, basketball and tennis courts may be open for use by individuals or members of the same household only, but all playgrounds, picnic areas, other similar areas conducive to public gathering, and attended areas shall be closed. For other parks, check with the local jurisdiction and follow any requirements for that jurisdiction. Additionally, the permitted outdoor activities in this PHO do not include activities that would violate the **Social Distancing Requirements** defined in Section III, below.
4. Performing work providing for businesses, government entities, and industries authorized Section II of this Order, or to otherwise carry out activities permitted in this Order.
5. Caring for a family member, a vulnerable person, or pet in another household, or to care for livestock kept at a location other than an individual's home.

B. Necessary Travel. For purposes of this Order, travel is Necessary for any of the following purposes: (1) providing or accessing **Necessary Activities, Minimum Basic Operations, Critical Government Functions**, and **Critical Businesses**, and other businesses or industries authorized in Section II of this Order; (2) receiving materials for distance learning, for receiving meals, and any other related services from educational institutions; (3) returning to a place of residence from outside the jurisdiction; (4) travel required by law enforcement or court order; (5) travel to transport children between separate households pursuant to a parenting plan

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or other agreement governing parental responsibilities; (6) non-residents returning to their place of residence; (7) moving to a new residence, including individuals whose Residence is unsafe due to domestic violence concerns.

C. Critical Business. Any business, including any for profit or non-profit, regardless of its corporate structure, engaged primarily in any of the commercial, manufacturing, or service activities listed in **Appendix F**, must continue to comply with the guidance and directives for maintaining a clean and safe work environment issued by the Colorado Department of Public Health and Environment (CDPHE) and any applicable local health department. **Critical Businesses** must comply with **Social Distancing Requirements** and all PHOs currently in effect to the greatest extent possible and will be held accountable for doing so. A list of Critical Businesses is contained in **Appendix F** to this Order.

D. Critical Government Functions. The provision, operation and support of the following state and local government functions shall continue:

1. Public safety (police stations, fire and rescue stations, correctional institutions, emergency vehicle and equipment storage, and, emergency operation centers)
2. Emergency response
3. Judicial branch operations including state and municipal courts, including attorneys if necessary for ongoing trials and required court appearances, unless appearances can be done remotely
4. The Colorado General Assembly, legislative bodies of municipal governments, and executive branch functions
5. Emergency medical (hospitals, ambulance service centers, urgent care centers having emergency treatment functions, and non-ambulatory surgical structures but excluding clinics, doctors offices, and non-urgent care medical structures that do not provide these functions)
6. Designated emergency shelters
7. Communications (main hubs for telephone, broadcasting equipment for cable systems, satellite dish systems, cellular systems, television, radio, and other emergency warning systems, but excluding towers, poles, lines, cables, and conduits)
8. Public utility plant facilities for generation and distribution (drinking water and wastewater infrastructure, hubs, treatment plants, substations and pumping stations for power and gas, but not including towers, poles, power lines, and oil and gas buried pipelines)
9. Transportation. All public and private airports, airlines, taxis, transportation network companies (such as Uber and Lyft), vehicle rental services,

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paratransit, and other private, public, and commercial transportation and logistics providers necessary for **Necessary Activities**

10. Transportation infrastructure (aviation control towers, air traffic control centers, and emergency equipment aircraft hangars), critical road construction and maintenance
11. Hazardous material safety
12. Services to at-risk populations and **Vulnerable Individuals**
13. Activities related to federal, state, and local elections, including any required acts of a political party, provided **Social Distancing Requirements** are observed to the greatest extent possible
14. Any government service, state or local, required for the public health and safety, government functionality, or vital to restoring normal services
15. Election operations, including but not limited to election judges, signature gatherers/circulators, campaign workers and volunteers

E. Field Services means a service that is being provided out in the field as opposed to a company property, including third party private properties, such as a third party household.

F. Gym means a building or room used for indoor sports or exercise, such as fitness, dance, exercise or group classes, exercise studios and centers, recreation centers, bowling alleys, pools, and other indoor athletic facilities.

G. Horse track means a licensed race track, which is any premises licensed pursuant to this Article 32 of Title 44 of the Colorado Revised Statutes for the conduct of racing. Sections 44-32-102(2)(a), (2)(b), (3), (8) & (24), C.R.S.

H. Minimum Basic Operations. The minimum necessary activities to (1) maintain the value of the business's inventory, ensure security, process payroll and employee benefits, or for related functions; or (2) facilitate employees of the business being able to continue to work remotely from their residences are allowable pursuant to this Order; continue filling online product orders and to process customer orders remotely. Any business supporting **Minimum Basic Operations** must comply at all times with **Social Distancing Requirements**.

I. Non-Critical Office-Based Business means any commercial business that is conducted in an office and not a production environment and is not included in the list of **Critical Businesses** in **Appendix F**.

J. Non-Critical Retail means any retail service that is not included in the list of critical retail services in **Appendix F**. Examples of **Non-Critical Retail** include retailers of

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clothing, home goods, cell phone stores, mattresses, appliances, thrift shops, apothecaries, vape and tobacco shops, craft, hobby and fabric stores, fishing tackle retailers, sporting goods, boutiques, etc.

K. Limited Healthcare Settings means those locations where certain healthcare services are provided, including acupuncture (not related to personal services), athletic training (not related to personal services), audiology services, services by hearing aid providers, chiropractic care, massage therapy (not related to personal services), naturopathic care, occupational therapy services, physical therapy, and speech language pathology services. These individual services may only be performed with 10 or fewer people in a common business space at a maximum of 50% occupancy for the location, whichever is less, including both employees and patients, e.g. 5 chiropractors providing services to 5 customers, with **Social Distancing Requirements** in place of 6 feet distancing between customers receiving services. Employees must wear medical grade masks at all times, and patients must wear at least a [cloth face covering](#) at all times. Services provided in **Limited Healthcare Settings** that are ordered by a medical, dental or veterinary practitioner, are subject to the requirements of Reference PHO 20-29; otherwise, the services are subject to the requirements of PHO 20-28.

L. Personal Services means services and products that are not necessary to maintain an individual's health or safety, or the sanitation or essential operation of a business or residence. **Personal Services** include, but are not limited to, pastoral services except as specified in **Appendix F**, personal training, dog grooming, or body art and also applies to noncritical professionals regulated by the Division of Professions and Occupations, within the Department of Regulatory Agencies (DORA) including but not limited to services provided by personal beauty professionals such as hairstylists, barbers, cosmetologists, estheticians, nail technicians, as well as massage therapists, whose work requires these professionals to be less than six feet from the person for whom the services are being provided. Massage therapy services ordered by a healthcare professional should consult **Executive Order D 2020 027**. These individual services may only be performed with 10 or fewer people in a common business space at a maximum of 50% occupancy for the location, whichever is less, including both employees and customers, e.g. 5 hairstylists providing services to 5 customers, with **Social Distancing Requirements** of at least 6 feet distancing between different customers receiving services. Both employees and customers must wear at least a cloth face covering or a medical grade mask at all times. Only services that can be performed without the customer removing their mask are permitted.

M. "Safer at Home" means individuals stay in your place of residence as much as possible, and avoid unnecessary social interactions.

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N. Social Distancing Requirements. To reduce the risk of disease transmission, individuals shall maintain at least a six-foot distance from other individuals, wash hands with soap and water for at least twenty seconds as frequently as possible or using hand sanitizer, cover coughs or sneezes (into the sleeve or elbow, not hands), regularly clean high-touch surfaces, and not shake hands.

O. Simulcast facility means a licensed in-state simulcast facility pursuant to this Article 32 of Title 44 of the Colorado Revised Statutes, also commonly referred to as an “off-track betting facility” or “OTB”. Sections 44-32-102(11) & (21), C.R.S.

P. Stay at Home means to stay in your place of residence, which includes hotels, motels, and shared rental facilities, and not leave unless necessary to provide, support, perform, or operate **Necessary Activities, Minimum Basic Operations, Critical Government Functions, and Critical Businesses**.

Q. “Vulnerable Individual” means:

1. Individuals who are 65 years and older;
2. Individuals with chronic lung disease or moderate to severe asthma;
3. Individuals who have serious heart conditions;
4. Individuals who are immunocompromised;
5. Pregnant women; and
6. Individuals determined to be high risk by a licensed healthcare provider.

IV. Postsecondary Institutions. Programs and courses at postsecondary institutions that cannot be conducted remotely, generally due to equipment requirements, may be conducted through limited in-person instruction. Institutions that wish to resume providing in-person instruction must inform the Colorado Department of Higher Education and ensure that **Social Distancing Requirements** are strictly followed. Additionally, students are allowed to opt out of the in-person instruction; such students will be treated no differently than students in all other courses that have ceased in-person instruction due to the COVID-19 situation.

V. Variance Requests. Any Colorado county may request a variance from the Colorado Department of Public Health and Environment authorizing implementation of an alternative COVID-19 suppression plan that differs from part or all the requirements of **Executive Order D 2020 044** or this Order. The variance request must include an alternative COVID-19 suppression

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plan endorsed by the local public health agency and adopted by the county commissioners or other county-level governing body, in addition to verification from local hospitals that they have the capacity to serve all people needing their care. Further guidance on variance requests is contained in **Appendix G**.

VI. Enforcement

This Order will be enforced by all appropriate legal means. Local authorities are encouraged to determine the best course of action to encourage maximum compliance. Failure to comply with this order could result in penalties, including jail time, and fines, and may also be subject to discipline on a professional license based upon the applicable practice act.

VII. Severability

If any provision of this Order or the application thereof to any person or circumstance is held to be invalid, the remainder of the Order, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Order are severable.

VIII. Duration

This Order shall become effective on Thursday May 14, 2020 and will continue to be in effect until 11:59 p.m. on May 26, 2020, unless extended, rescinded, superseded, or amended in writing.



Jill Hunsaker Ryan, MPH
Executive Director

May 14, 2020
Date

Appendix A. Critical and Non-Critical Retail Requirements

Appendix B. Field Services

Appendix C: Non-Critical Office-Based Businesses

Appendix D: Personal Services

Appendix E: Limited Healthcare Settings

Appendix F: Critical Businesses List

Appendix G: County Variance Requests

Appendix H: Non-Critical Manufacturing

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APPENDIX A. CRITICAL AND NON-CRITICAL RETAIL REQUIREMENTS

I. Effective April 27, 2020, in addition to meeting the requirements of this Order, and specifically Section II.I, **Non-Critical Retail** may operate and offer goods through delivery service, window service, walk-up service, drive-through service, drive-up service, curbside delivery, or any other manner allowing for strict compliance with mandatory **Social Distancing Requirements**, except as prohibited or limited by this Order. Restricting interactions to curbside pick-up or delivery minimizes touch. **Non-Critical Retailers** are encouraged to continue curbside pick-up or delivery for longer term service wherever possible. **Critical** and **Non-Critical Retailers** must implement the requirements in Section II.I, in addition to the specific requirements in this Appendix. Indoor malls are addressed separately in Section III of this **Appendix**.

A. **Critical** and **Non-Critical Retail** must implement the following measures within the workplace to minimize disease transmission:

1. Elevate and increase frequency of [cleaning practices](#), including cleaning and disinfection of high touch areas.
2. Restrict return policy to only items that can be properly sanitized prior to re-selling.
3. Post signage for employees and customers on good hygiene and other sanitation practices.

B. **Critical** and **Non-Critical Retail** must implement the following measures regarding employees to minimize disease transmission:

1. Provide guidance and encouragement on maintaining 6 foot distancing between both employees and employees and customers.
2. Provide appropriate face coverings and gloves to all employees whenever possible, and also allow employees who can to provide their own appropriate face coverings and gloves for work activities. Employees without face coverings shall not perform tasks that require engagement with the public or with other coworkers.
3. Encourage frequent breaks to allow employees to wash or sanitize their hands.
4. Require employees to stay home when showing any symptoms or signs of sickness.

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5. Provide personal protective equipment (PPE) for employees who are managing deliveries, returns, etc.

C. Employers must implement the following measures regarding customers to minimize disease transmission:

1. Require 6 foot distancing measures wherever possible, such as marked space in pick up lines.

II. Effective May 1, 2020, **Non-Critical Retail** may open at fifty percent (50%) capacity for in-person services if the business can demonstrate compliance with all of the following requirements:

A. **Critical and Non-Critical Retail** must continue implementing the measures within the workplace listed in Section I.A of this **Appendix A**, and in addition:

1. maintain 6 foot distancing between patrons and employees;
2. effectively symptom monitor employees as listed in Section II.I;
3. provide face coverings, and gloves as necessary and appropriate, to employees;
4. ensure ability to adequately clean and disinfect both back-room and retail spaces; and
5. provide dedicated, in-store hours for vulnerable or at-risk individuals.

B. **Critical and Non-Critical Retail** must implement the measures regarding employees listed in Section I.B of this **Appendix A**.

C. **Critical and Non-Critical Retail** must implement the measures to minimize disease transmission for customers listed in Section I.C of this **Appendix A** in addition to the following measures:

1. limit the number of customers on the premises as needed to make 6 foot distancing between customers attainable;
2. provide decals and demarcation for waiting area in lines that meet social distancing criteria;
3. create signage encouraging vulnerable and at-risk individuals to refrain from shopping outside of dedicated hours set aside for those who are more vulnerable or at-risk;
4. create signage to encourage the use of masks and gloves by customers while on the premises; and

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5. provide hand sanitizer and wipes at entrances and other high-traffic locations to the greatest extent possible.

III. Indoor Malls. Indoor malls must not open to the public for entry. Retailers operating in indoor malls that have their own exterior entrance from the outside may operate as all other **Non-Critical Retail** in accordance with this **Appendix**. Retailers and service providers operating in an indoor mall that do not have their own exterior entrance from the outside remain closed; however, these vendors may establish delivery service, including curbside delivery, in strict compliance with mandatory **Social Distancing Requirements**.

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APPENDIX B: FIELD SERVICES

I. Effective April 27, 2020, **Field Services** may resume if the business can demonstrate compliance with the requirements in Section II.I of this Order, in addition to the following requirements specific to **Field Services**:

A. Employers must implement the following measures regarding employees to minimize disease transmission:

1. adhere to all general rules or guidance on social gathering limitations when working out of the office;
2. implement procedures for field-based employees to monitor for symptoms and report-in to management daily on health status.
3. comply with the **Social Distancing Requirements** and maintain a 6 foot distance between employees and from their customers;
4. provide gloves and masks for any customer interactions or work being done in third-party home or office spaces;
5. When scheduling or conducting field services, either the employer or an employee must inquire whether third-party homes have individuals symptomatic for COVID-19 or have been in contact with known positive cases, and exercise caution when inside the home and interacting with anyone in the home if they do;
6. maintain a detailed log of customer interactions to enable contact tracing if it becomes necessary. The log should include name, date, and location of contact, as well as the contact's phone number and/or email address;
7. require that all tools or equipment be sanitized after each customer visit;
8. prioritize work accommodations for **Vulnerable Individuals**, prioritizing telecommuting;
9. provide guidance and encouragement on personal sanitation, including frequently washing hands. This guidance should include all of the following:
 - a. frequently and thoroughly wash your hands with soap and water for at least 20 seconds. If soap and water are not available, use hand sanitizer with at least 60% alcohol;
 - b. cover coughs and sneezes with a tissue, then throw the tissue in the trash, or use your inner elbow or sleeve;
 - c. avoid touching your eyes, nose, and mouth with unwashed hands;
 - d. stay home if you're sick, and keep your children home if they are sick; and

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e. clean high touch surfaces in your home, and personal items such as cell phones, using regular household products.

B. Employers must implement the following measures regarding customers to minimize disease transmission:

1. provide estimates, invoices, receipts, and other documentation electronically to negate the need for paper;
2. provide contactless payment options in the field whenever possible;
3. encourage customers to maintain 6 foot distancing from field service employees; and
4. encourage customers to use facial coverings when field services are being conducted.

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APPENDIX C: NON-CRITICAL OFFICE-BASED BUSINESSES

I. Effective May 4, 2020, **Non-Critical Office-based Businesses** may resume at fifty percent (50%) of their in-office occupancy if the business can demonstrate compliance with the requirements of this Order, including Section II.I, and all of the following:

A. Employers must implement the following measures within the workplace to minimize disease transmission:

1. ensure a minimum of 6 feet of space between all desks and workspaces;
2. modify the flow of people traffic to minimize contacts, such as identifying doors for entry or exit only;
3. conduct standard office cleaning with increased frequency and supplement with sanitization of high touch areas, in accord with [CDPHE guidelines](#);
4. provide employees with cleaning and disinfecting products and guidance on daily workspace cleaning routines; and
5. post signage for employees and customers on good hygiene and new office practices.

B. Employers must implement the following measures regarding employees to minimize disease transmission:

1. maintain in-office occupancy at no more than 50% of total by maximizing use of telecommuting and developing in-office rotation schedules;
2. minimize the number of in-person meetings and maintain 6 foot distancing in those meetings;
3. provide guidance and encouragement on maintaining 6 foot distancing and taking breaks to wash hands;
4. require gloves and masks for any customer interactions; and
5. allow telecommuting to the greatest extent possible.

C. Employers must implement the following measures regarding customers to minimize disease transmission:

1. require 6 foot distancing measures wherever possible, such as marked space in check-out lines;
2. encourage customers to use facial coverings when on the business premises;
3. provide hand sanitizer at entrances and other high-traffic locations; and

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4. implement hours where service is only provided to **Vulnerable Individuals** if possible.

APPENDIX D: PERSONAL SERVICES

I. Effective May 1, 2020, **Personal Services** may resume if the business can demonstrate compliance with the requirements of this Order, including Section II.I, and all of the following:

A. Employers and sole proprietors must implement the following measures within the workplace to minimize disease transmission:

1. Employ strict hygiene guidelines and cleaning and disinfection procedures for all contact surfaces and tools, in accordance with [CDPHE Worker and Customer Protection Guidelines for Non-Healthcare Industries](#);
2. Ensure a minimum of 6 feet of separation between clients and customers, including services for pets, when not directly performing service;
3. Post signage for employees and customers on good hygiene and safety measures being taken;
4. Minimize in-home and in-facility services with remote alternatives whenever possible, such as drive-by services or virtual meetings; and
5. Limit individuals, including employees and customers, to no more than 10 people in a common business space at a maximum of 50% occupancy, and all businesses offering services in individual rooms must comply with the requirements of this Order for each room.

B. Employers must implement the following measures regarding employees to minimize disease transmission:

1. Services with close personal contact, such as beauty professionals, massage, etc., must implement the following:
 - a. wear a face covering and gloves at all times, or, if wearing gloves is not feasible or appropriate, meticulous hand washing;
 - c. change gloves and wash hands between every individual or pet served;
 - d. clean and disinfect all shared equipment and tools between every individual or pet served; and
 - e. maintain a detailed log of customer interactions to enable contact tracing if it becomes necessary. The log should include name, date, details of services performed, and location of contact, as well as the contact's phone number and/or email address.

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2. Personal services with low personal contact, such as movers or repair services, must implement the following:
 - a. maintain a minimum of 6 feet of separation between customers and adhere to social gathering limits of no more than 10 people. For real estate work, open houses are prohibited;
 - b. require face coverings and, if feasible, gloves for any customer interactions; and
 - c. provide guidance on strict hygiene precautions to employees.

C. Personal Services must implement the following measures regarding customers to minimize disease transmission:

1. provide customer services by appointment only, do not allow walk-ins or waiting for an appointment, and limit all group classes of any kind for individuals or for pets, pet training classes, or other activities associated with picking up pets to no more than 10 customers at a time and all following **Social Distancing Requirements**;
2. require customers to wear face coverings; if a customer does not have a mask, a "disposable mask" could be provided;
3. conduct symptoms check for all customers of services with close personal contact and decline to provide services to anyone who has symptoms. A sample form can be found [here](#); and
4. provide contactless payment options whenever possible.

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APPENDIX E: LIMITED HEALTHCARE SETTINGS

I. Effective April 27, 2020, **Limited Healthcare Settings** may resume if the healthcare entity can demonstrate compliance with the requirements of this Order, including Section II.I and may restart voluntary and elective surgeries and procedures in limited healthcare facilities and offices with required personal protective equipment (PPE) in accord with the priorities, requirements, and specific criteria below.

- A.** Employers and sole proprietors of **Limited Healthcare Settings** must implement the following measures within the overall workplace, including administrative and front office operations, to minimize disease transmission:
1. The practice must have access to adequate PPE in order to sustain recommended PPE use for its workforce for two weeks without the need for emergency PPE-conserving measures. If a practice proposes to extend the use of or reuse PPE, it must follow CDC guidance.¹
 2. The practice must implement strict infection control policies as recommended by the CDC.²
 3. The practice must ensure a minimum of 6 feet of separation between clients and patients, when not directly performing service, with no more than ten (10) people in a common business space at a maximum of 50% occupancy, and all settings offering services in individuals rooms must comply with the requirements of this Order for each room.
 4. The practice must post signage for employees and patients on good hygiene and safety measures being taken.
 5. The practice must minimize in-home and in-facility services with remote alternatives whenever possible, such as drive-by services or virtual meetings.
 6. Practices must maintain a plan to reduce or stop voluntary and elective surgeries and procedures should a surge/resurgence of COVID-19 cases occur in their region.

B. Employers of **Limited Healthcare Settings** must implement the following measures regarding employees to minimize disease transmission:

1. Services with close, direct personal contact must implement the following:

¹ <https://www.cdc.gov/coronavirus/2019-ncov/hcp/ppe-strategy/index.html>

² <https://www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control.html>

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- a. wear medical grade mask and gloves at all times;
 - b. change gloves and wash hands between every patient;
 - c. clean and disinfect all shared equipment and tools between every patient; and
 - d. maintain a detailed log of patient interactions to enable contact tracing if it becomes necessary. The log should include name, date, details of services performed, and location of contact, as well as the contact's phone number
2. Services with low personal contact must implement the following:
 - a. maintain a minimum of six 6 feet of separation between customers and limit to no more than ten (10) people in a common business space at a maximum of 50% occupancy.
 - b. require face coverings and, if feasible, gloves for any customer interactions; and
 - c. provide guidance on strict hygiene precautions to employees.
3. The practice must require all administrative personnel to wear a facemask, that can be cloth if necessary. Masks may be removed when social distancing of at least 6 feet if possible (e.g., after entering a private office). In order to ensure staff can take off their masks for meals and breaks, scheduling and location for meals and breaks should ensure that at least a 6-foot distance can be maintained between staff when staff needs to remove their mask. It is important for healthcare settings to emphasize that hand hygiene is essential to maintaining employee safety, even if staff are wearing masks. If the facemask is touched, adjusted or removed, hand hygiene should be performed.

C. Limited Healthcare Settings must implement the following measures regarding customers to minimize disease transmission:

1. The practice must provide services by appointment only, do not allow walk-ins or waiting for an appointment;
2. The practice must require patients to wear face coverings; if a patient does not have a mask, a "disposable medical mask" could be provided;
3. The practice must conduct symptom checks for all patients, decline to provide services to anyone who has symptoms, and refer them to their primary care physician. A sample form can be found [here](#); and
4. The practice must provide contactless payment options whenever possible;
5. The practice must follow social distancing protocols of maintaining at least a 6-foot distance between individuals wherever possible such as in waiting rooms and other small spaces, and should use physical barriers within patient care areas when possible.

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6. The practice must appropriately schedule patients, so that providers have sufficient time to change PPE and ensure rooms and equipment can be cleaned and disinfected between each patient.
7. The practice should continue to maximize the use of telehealth and virtual office or clinic visits.
8. The practice should use virtual waiting rooms when possible, with patients who are able to wait in their cars not entering the office until they can be moved immediately to an exam room.
9. The practice should implement source control for everyone entering the office or clinic, including requiring all patients and visitors to wear a cloth mask when entering any healthcare building, and if they arrive without a mask, one should be provided.

D. As best practice, it is recommended that once voluntary and elective surgeries and procedures resume, **Limited Healthcare Settings** reassess their operations every two weeks, in order to ensure:

1. All of the above approaches and criteria are being met;
2. Procedures are prioritized based on whether their continued delay will have an adverse health outcome.
 - a. Voluntary and elective surgeries and procedures should be prioritized based on indication and urgency³;
3. Strong consideration is given to the balance of risks versus benefits for patients in higher-risk groups such as those over age 65 and those with compromised immune systems or lung and heart function;
4. All patients are pre-screened for COVID-19 risk factors and symptoms prior to delivering care, via telehealth when applicable; and
5. Compliance with the guidance and directives for maintaining a clean and safe work environment issued by the CDPHE and any applicable local health department for critical businesses is maintained, including compliance with **Social Distancing Requirements** and all PHOs currently in effect to the greatest extent possible.

³ Urgent and emergent care should continue in accordance with OHA and CMS guidance.

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APPENDIX F: CRITICAL BUSINESSES

Critical Business. Any business, including any for profit or non-profit, regardless of its corporate structure, engaged primarily in any of the commercial, manufacturing, or service activities listed below, may continue to operate as normal. **Critical Businesses** must comply with the guidance and directives for maintaining a clean and safe work environment issued by the Colorado Department of Public Health and Environment (CDPHE) and any applicable local health department. **Critical Businesses** must comply with **Social Distancing Requirements** and all PHOs currently in effect to the greatest extent possible and will be held accountable for doing so. **Critical Businesses** do NOT include health clubs as defined in C.R.S. § 6-1-102(4.6), fitness and exercise gyms, and similar facilities, or any of the other businesses required to close by PHO 20-22.

“**Critical Business**” means:

1. Healthcare Operations, Including:

- Hospitals, clinics, and walk-in health facilities
- Medical and dental care, including ambulatory providers
- Research and laboratory services
- Medical wholesale and distribution
- Home health care companies, workers and aides
- Pharmacies
- Pharmaceutical and biotechnology companies
- Behavioral health care providers
- Veterinary care and livestock services
- Nursing homes, residential health care, or congregate care facilities
- Medical supplies and equipment manufacturers and providers, including durable medical equipment technicians and suppliers
- Blood banks

2. Critical Infrastructure, Including:

- Utilities and electricity, including generation, transmission, distribution and fuel supply
- Road and railways

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- Oil and gas extraction, production, refining, storage, transport and distribution
- Public water and wastewater
- Telecommunications and data centers
- Transportation and infrastructure necessary to support critical businesses
- Hotels, and places of accommodation, excluding private, short-term vacation-style rentals such as those arranged through an online hosting platform, including but not limited to VRBO or Airbnb, homeowner rentals, and privately owned residences for rent that are rented for a period of 30 days or fewer, except if offered for use for the public health response.
- Businesses and organizations that provide food, shelter, social services, and other necessities of life for economically disadvantaged, persons with access and functional needs, or otherwise needy individuals
- Food and plant cultivation, including farming crops, livestock, food processing and manufacturing, animal feed and feed products, rendering, commodity sales, and any other work critical to the operation of any component of the food supply chain
- Any business that produces products critical or incidental to the construction or operation of the categories of products included in this subsection
- Flight schools, but only for the purpose of FAA-required pilot proficiency, and currency activities and practical checkrides, not for elective routine flight instruction

3. Critical Manufacturing, Including:

- Food processing, manufacturing agents, including all foods and beverages
- Chemicals
- Computers and computer components
- Medical equipment, components used in any medical device, supplies or instruments
- Pharmaceuticals
- Sanitary products
- Telecommunications
- Microelectronics/semiconductor
- Agriculture/farms
- Household paper products

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- Any business that produces products critical or incidental to the processing, functioning, development, manufacture, packaging, or delivery of any of the categories of products included in this subsection
- Any manufacturing necessary to support a **Critical Business**

4. Critical Retail, Including:

- Grocery stores including all food and beverage stores
- Farm and produce stands
- Gas stations and convenience stores
- Restaurants and bars (for take-out/delivery only as necessary under **Executive Order D 2020 011** and **PHO 20-22**, as amended)
- Marijuana dispensary (only for the sale of medical marijuana or curbside delivery pursuant to **Executive Order D 2020 011**)
- Liquor stores
- Firearms stores
- Hardware, farm supply, and building material stores
- Establishments engaged in the retail sale of food and any other household consumer products (such as cleaning and personal care products), excluding retailers of only health and nutrition-related products (vitamins, minerals, supplements, herbs, sports nutrition, diet and energy products)
- Establishments engaged in the sale of products that support working from home (this exclusion does not include businesses that primarily sell hobby craft supplies)

5. Critical Services, Including:

- Trash, compost, and recycling collection, processing and disposal
- Mail and shipping services, and locations that offer P.O. boxes
- Self-serve laundromats and garment and linen cleaning services for critical businesses
- Building cleaning and maintenance
- Child care services
- Automobile rental, automobile online sales with no touch delivery service, auto supply and repair (including retail dealerships that include repair and maintenance, but not in person retail sales)
- Warehouse/distribution and fulfillment, including freight distributors

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- Funeral homes, crematoriums, and cemeteries, with strict compliance with **Social Distancing Requirements** for employees and any attendees of services
- In-person pastoral services for individuals who are in crisis or in need of end of life services provided social distancing is observed to the greatest extent possible. Houses of worship may remain open, however, these institutions are encouraged to implement electronic platforms to conduct services whenever possible or to conduct smaller (10 or fewer congregants per room while ensuring 6 feet in between congregants), more frequent services to allow strict compliance with **Social Distancing Requirements**.
- Storage for **Critical Businesses**
- Animal shelters, animal boarding services, animal rescues, zoological facilities, animal sanctuaries, and other related facilities
- Moving services
- In person group counseling or recovery meetings for substance abuse or behavioral health following social distancing of 6 feet and no more than 10 participants

6. News Media

- Newspapers
- Television
- Radio
- Other media services

7. Financial and Professional Institutions, Including:

- Banks and credit unions
- Insurance and payroll
- Services related to financial markets
- Professional services, such as legal, title companies, or accounting services, real estate appraisals and transactions

8. Providers of Basic Necessities to Economically Disadvantaged Populations, Including:

- Homeless shelters and congregate care facilities
- Food banks
- Human services providers whose function includes the direct care of patients in State-licensed or funded voluntary programs; the care,

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protection, custody and oversight of individuals both in the community and in State-licensed residential facilities; those operating community shelters and other critical human services agencies providing direct care or support

9. Construction, Including but not Limited To:

- Housing and housing for low-income and vulnerable people
- Skilled trades such as electricians, plumbers
- Other related firms and professionals who provide services necessary to maintain the safety, sanitation, and critical operation of residences and other **Critical Businesses** or **Critical Government Functions**, and other essential services

10. Defense

- Defense, security, and intelligence-related operations supporting the State of Colorado, local government, the U.S. Government or a contractor for any of the foregoing
- Aerospace operations
- Military operations and personnel
- Defense suppliers

11. Critical Services Necessary to Maintain the Safety, Sanitation and Critical Operations of Residences or Other Critical Businesses, Including:

- Law enforcement
- Fire prevention and response
- Building code enforcement
- Security
- Emergency management and response
- Building cleaners or janitors
- General maintenance whether employed by the entity directly or a vendor (including maintenance and repair of ordinary household and business appliances but not in-person retail sales of such products)
- Automotive and bicycle repair
- Disinfection
- Snow removal
- Bail bonds agents
- Pest control

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12. Vendors that Provide Critical Services or Products, Including Logistics and Technology Support, Child Care and Services:

- Logistics
- Technology support for online and telephone services
- Child care programs and services
- Government owned or leased buildings
- **Critical Government Functions**

13. Educational Institutions that Provide Critical Services to Students and the General Public:

- P-12 public school and private schools for the purpose of providing meals, housing, facilitating or providing materials for distance learning, and providing other essential services to students, provided that **Social Distancing Requirements** are observed.
- Postsecondary institutions, including private and public colleges and universities, for the purpose of facilitating distance learning, providing in person classroom or laboratory education for less than 10 students per classroom or lab in medical training fields only, or performing essential functions, provided that **Social Distancing Requirements** are observed, such as security, medical and mental health services, housing, food services, and critical research.

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APPENDIX G: COUNTY VARIANCE REQUESTS

Governor Jared Polis issued **Executive Order D 2020 044 Safer at Home** effective April 27, 2020. The key elements of the Order are that most people still stay at home as much as possible and avoid unnecessary social interactions; vulnerable populations continue to stay at home except to support or perform necessary activities or participate in critical government functions or critical businesses; there is limited reopening of postsecondary institutions, and certain business operations are permitted; people are still encouraged to stay within their county of residence or employment as much as possible; public gatherings of more than ten (10) persons are prohibited; and Coloradans are advised to wear non-medical cloth face coverings that cover the nose and mouth whenever in public.

Any county that desires to apply for a variance from part or all of the executive order may do so after meeting the following criteria and submitting an alternative COVID-19 suppression plan to be approved or denied by Colorado Department of Public Health and the Environment (CDPHE), attention Executive Director, Jill Hunsaker Ryan, MPH.

Criteria for variance consideration:

- 1) The local public health agency endorses the alternative plan;
- 2) Local hospitals can verify that they have the capacity to serve all people needing their care;
- 3) The county commissioners (or other county-level governing body), or, in the case of the City and County of Denver, the mayor of Denver, or, in the case of the City and County of Broomfield, the city council, vote affirmatively to adopt the alternative plan in place of the state Safer-At-Home order; and
- 4) Counties with sovereign tribal nations (Ute Mountain Ute and Southern Ute Indian tribes) must obtain a letter of support from tribes and include it with their variance application.

The local variance process allows communities that are not experiencing a high rate of transmission to tailor social distancing policies to local conditions, in order to promote community wellness and economic stability. To protect other communities and hospital systems statewide, it is paramount that the local variance process only be used when transmission is at a low enough level to be suppressed through testing and containment efforts to detect positive cases, ensure successful isolation and quarantine close contacts. Examples of local conditions that should be considered in seeking a variance include: a low number of new cases per day,

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cases declining for the past 14 days, declining positive tests as a percent of total tests for the past 14 days, low and stable case growth rate or equivalent, and having an early warning system to detect an increase in community spread or outbreaks, with triggers for tightening restrictions to prevent a breach of local hospital system capacity. Considerations and triggers should be documented in the plan submitted to CDPHE.

The following framework is being used by the State of Colorado to move between levels of social distancing. This may be helpful guidance in developing a local request:

Colorado's Framework for Social Distancing

Stay at Home

- Widespread suppression is required to stem exponential disease transmission
- People are staying at home with limited exceptions
- Healthcare/hospital capacity is still limited
- Testing availability and containment capacity is still being built
- People are encouraged to not travel between counties except for work or to obtain necessary services

Safer At Home

- Disease has been suppressed and hospital capacity is not threatened.
- Health care capacity is increasing
- Testing availability and containment capacity are increasing
- Most people still stay at home as much as possible and avoid unnecessary social interactions
- Vulnerable populations stay home with limited exceptions
- People are encouraged not to travel between counties except for work or to obtain necessary services
- Public health has an early warning system to detect a significant increase in cases or

Protect Your Neighbor

- Disease transmission is low
- Healthcare capacity is robust
- Testing availability and containment capacity are working at scale
- It's safer for people to socialize more normally, while taking significant precautions
- Strong protections for vulnerable populations are still needed
- Public health has an early warning system in place to detect a significant increase in cases or greater demand for medical care

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greater demand for
medical care

The Colorado Department of Public Health and Environment is available to provide technical assistance to any county considering a variance. The department will consider applications for variances based on the submitted plan's rationale for a step down and the presence of an early warning system with triggers for tightening back up. CDPHE reserves the right to approve or deny applications. Counties that choose to not comply with this executive order or an approved variance will be subject to the loss of emergency preparedness funds.

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APPENDIX H: NON-CRITICAL MANUFACTURING

I. Effective May 4, 2020, **Non-Critical Manufacturing** may resume if the business can demonstrate compliance with the requirements of this Order, including Section II.I, and all of the following:

A. Employers must implement the following measures within the workplace to minimize disease transmission:

1. Create and implement policies or procedures for all of the following:
 - i. Limiting group interactions to keep any group less than ten (10) people by
 - a. staggering of shift changes, breaks, lunches, etc., and
 - b. eliminating all-staff in-person meetings or lunches;
 - ii. Modifying the flow of people traffic to minimize contacts, such as arranging one-way flow of work and people;
 - iii. Implementing 6 foot distancing and impermeable barriers between employees whenever possible;
 - iv. Limiting the sharing of tools, equipment, or other resources to the greatest extent possible, and if not feasible, implement cleaning and disinfection protocols as often as possible for any such shared tool, equipment and resources; and
 - v. Requiring hand washing upon arrival and before departure, establishing set hand washing time frames throughout shifts, and providing additional hand washing stations if possible.
2. Conduct cleaning protocols as follows:
 - i. Daily deep cleaning and disinfecting and full cleaning in-between shifts in accordance with [CDPHE guidance](#); and
 - ii. Establish protocols to increase the frequency of sanitization in work and common spaces, following OSHA requirements and CDPHE guidance, [found here](#);
3. Provide contactless options, such as entry to the worksite, payments, etc., whenever applicable and possible;
4. Use paperless, electronic options whenever possible to reduce the use of sharing paperwork;
5. Ensure ventilation of work and break areas is in line with [OSHA guidance](#);

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6. Support transportation arrangements that discourage carpooling; and
7. Develop a Preparedness and Response document in accordance with OSHA guidance.

B. Employers must implement the following measures for employees to minimize disease transmission:

1. Provide guidance about how to comply with 6 foot distancing;
2. Designate workers to monitor and facilitate distancing on processing floor lines;
3. Require employees to use masks or face coverings, except where doing so would inhibit that individual's health;
4. Require employees to wash their hands upon arrival to and before departure from the facility, as well as frequently during workshifts, in accordance with the policy required in Section I.A.1.vi of this **Appendix**;
5. Disinfect work stations between shifts and/or at the end of the workday;
6. Group employees into teams or shifts that remain together;
7. Stagger employee lunch and break times;
8. Encourage all employees not critical to in-person operations to continue working from home or working remotely; and
9. Encourage the wearing of masks or other face coverings while carpooling or taking other forms of public transportation.

C. Employers must implement the following measures regarding customers to minimize disease transmission:

1. Prohibit entry to the worksite of all non-essential external visitors;
2. Conduct symptom checks for any essential visitors who will interact with employees;
3. Require essential visitors to wear masks or face coverings; and
4. Encourage 6 foot distancing and implement procedures to limit person-to-person interaction in inbound/outbound shipping areas.



Coronavirus Disease 2019

COVID-19

GUIDANCE FOR PLACES OF WORSHIP

For many of us, our faith and spiritual community are critical to our well-being, especially in a time of crisis. This document includes guidelines for places of worship under the State's "Safer-at-Home" Executive Order. It is important to note that your city or county may still be under a Stay-at-Home order or an approved variance from the statewide Safer-at-Home Order. If that is the case, please familiarize yourself with the guidelines applicable to places of worship under those orders, and abide by those guidelines.

Under Safer-at-Home, gatherings are permitted as long as the gatherings are with 10 people or fewer and physical distancing (6 feet apart) is observed. More than one limited gathering may occur in a building if they are in separate rooms (each with 4 walls and a door) and if physical distancing is observed and the gatherings are of 10 or fewer people in each room-- other Public Health Order guidance must also be followed. The Colorado Department of Public Health and Environment supports the necessary continuation of electronic platforms during the COVID-19 pandemic for services, Bible studies, small groups, meetings, etc. In addition, places of worship with adequate parking lot resources may safely hold "drive-in" services as long as the following guidelines are followed at all times. Showing how we value the sanctity of life and are acting to reduce the spread of this deadly virus by being innovative in safely meeting, the pastoral and spiritual needs of Coloradans is the calling of this moment in time.

Guidelines for drive-in type venues

Practice physical distancing, as detailed below.

- Use electronics that attendees can have inside the car or use a radio channel to broadcast the audio and/or video.
 - If you will be providing devices, ensure they are cleaned and disinfected prior to passing them out.
 - It is preferable for attendees to use their own, personal devices for audio/video.
- Attendees need to stay in their vehicles and not socialize through their vehicle windows.
- Public restrooms must be cleaned and have signage posted that they should be used by only one person at a time. [Cleaning guidance](#).
- Those most at risk, including people over age 65 and anyone with a pre-existing immune or respiratory condition, are urged to remain home, following the guidance of the previous Stay-at-Home order.
- There should be no other opportunity for in-person interaction. Do not have food or beverage or any other services at the site. Do not make available gathering spaces at this location for attendees to gather outside of their vehicles.
- Have attendees turn off their vehicles to avoid idling and protect everyone's health.

General guidelines for broadcasting services with a crew of 10 or fewer people

Crew shall follow all social/physical distancing requirements. The following requirements apply to crew, as well as participants who may be present at the time of broadcasting.

- Direct those having symptoms of COVID-19-- as well as people who have had close contact with a person who has symptoms (fever, dry cough, shortness of breath, head or body aches) to refrain from participating in any aspect of in-person services and stay at home unless they need medical care.

- People must be at least 6 feet apart at all times while seated and standing.
 - Brainstorm virtual alternatives to handshaking, handholding, hugging, communion, passing the peace, etc.
 - Remember, the smaller the group, the larger the space, and the healthier the people are beforehand, the lower the risk of transmission.
- Those most at risk of severe illness from COVID-19 (people 65 and older, people who have chronic lung disease or moderate to severe asthma, people who have serious heart conditions, people who are immunocompromised, and pregnant people) should follow the guidance of the previous Stay-at-Home order and not attend in-person services.
- Consider providing hand sanitizer and tissues in convenient locations.
- Urge attendees to wear a mask or cloth face covering over their mouths and noses while attending services.
- Consider asking (or screening) attendees for signs of illness before admitting them into the place of worship. Disallow individuals with elevated temperatures or signs of illness (coughing, runny nose, sneezing).

Clean and disinfect all surfaces before and after any in-person gathering.

- [Follow these guidelines.](#)

Health protocols for your employees, volunteers, and workspaces.

Maintain in-office occupancy at no more than 50% of total at one time by maximizing use of telecommuting and developing in-office rotation.

- Employees and volunteers are required to wear masks or cloth face coverings to protect themselves and others while at work.
- Allow for flexible work schedules, where possible, to lessen the need to be in the office during normal business hours. This could include allowing employees to work evenings or weekends, when the office is traditionally less crowded or closed.
- Minimize the number of in-person meetings and maintain adequate 6-foot distancing in those meetings. Use online conferencing, email, or the phone instead of in-person meetings, even when people are in the same building, whenever possible.
- Provide flexible or remote scheduling for employees who need to continue to observe Stay-at-Home, who may have child or elder care obligations, or who live with a person who still needs to observe Stay-at-Home due to underlying condition, age, or other factors.
- Be flexible for those most at risk of severe illness from COVID-19 (including people 65 and older, people who have chronic lung disease or moderate to severe asthma, people who have serious heart conditions, people who are immunocompromised, and pregnant people) because they need to follow the previous Stay-at-Home order.

Incorporate best practices

- Deputize workplace coordinator(s) charged with addressing COVID-19 issues and for planning and communication, developing a plan for resources like cleaning supplies and internal regular (daily or weekly) communication, planning for employees to be out of the office for quarantine or caring for others, and considering how new precautions will affect workflow, etc.
- Require gloves and masks or cloth face coverings for any interactions with other individuals (e.g. customers, co-workers, vendors)
- Provide employees with cleaning and disinfection products and guidance on daily workspace cleaning routines.
- Post signage for employees and customers on good hygiene and new office practices, and make regular announcements to remind employees and volunteers to follow physical distancing guidelines.
- Do not allow an employee or volunteer with known close contact to a person who is confirmed to have COVID-19 to return to work until the end of the 14-day self-quarantine period from the last date of exposure.
- Have employees or volunteers maintain at least 6 feet separation from other individuals.

- Encourage the use of digital files rather than paper formats (e.g., documentation, invoices, inspections, forms, agendas).
- Ensure a minimum of 6 feet of space between all desks/workspaces.

Screen employees and volunteers before coming into the place of worship

- Take their temperature and ask simple screening questions or have employees and volunteers take their temperature at home and report the results. Forms are available at <https://covid19.colorado.gov/guidance-resources>
- Immediately send home any employee or volunteer who has any of the following new or worsening signs or symptoms of possible COVID-19:
 - Cough.
 - Fever.
 - Shortness of breath.
 - Chills.
 - Head or body aches.
 - Sore throat.
 - Runny nose.
 - Vomiting or diarrhea.
 - New loss of taste or smell.
- Refer symptomatic employees and volunteers to the [CDPHE Symptom Tracker](#).
- Do not allow employees or volunteers with new or worsening symptoms to return to work until 10 days have passed since symptoms first appeared **and** they have been fever-free (without the help of medication) for 72 hours.
- Ask employees or volunteers to clean their hands frequently.

Health protocols for facilities

- Modify the flow of people traffic to minimize contact between people (e.g. designate doors for entry or exit only).
- Frequently clean and disinfect any regularly touched surfaces, such as doorknobs, tables, chairs, and restrooms.
- Implement 6-foot distancing measures (e.g., marked space).
- Ensure proper ventilation.
- Disinfect seats.
- Disinfect any items that come into contact with employees and volunteers.
- Make hand sanitizer, disinfecting wipes, soap and water, or similar disinfectant readily available at entrances and other high-traffic locations.
- Place readily visible signage to remind everyone of best hygiene practices.
- If a church or place of worship provides meals for employees, volunteers, or those in need it is recommended to have the meals individually packed for each employee or volunteer.
- Maintain rigorous sanitation practices like disinfection, handwashing, and cleanliness when preparing or serving anything edible.

Funerals and other special events

- For conducting funerals, please visit the CDC's website on [funeral guidance](#).
- Under Safer-at-Home, weddings and other small events may resume as long as the gatherings are of 10 or fewer people and physical distancing (6 feet apart) is observed. Event staff are required to wear a mask or cloth [face covering](#) and appropriate protective equipment as needed and required by [OSHA standards](#). The 10- person limit includes event staff.
- While the Safer-at-Home level is in effect, gatherings in both public and private spaces of more than 10 people are prohibited. We advise continuing to only socialize with members of your household. Any gatherings of 10 or

fewer people outside your household should adhere to all Social/Physical Distancing Requirements and recommendations.

JARED POLIS
GOVERNOR



136 STATE CAPITOL
DENVER, COLORADO 80203

TEL 303-866-2471
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D 2020 079

EXECUTIVE ORDER

Amending and Extending Executive Order D 2020 044 Safer at Home

Pursuant to the authority vested in the Governor of the State of Colorado and, in particular, pursuant to Article IV, Section 2 of the Colorado Constitution and the relevant portions of the Colorado Disaster Emergency Act, C.R.S. § 24-33.5-701 *et seq.*, I, Jared Polis, Governor of the State of Colorado, hereby issue this Executive Order to amend and extend Executive Order D 2020 044 concerning Safer at Home requirements due to the presence of coronavirus disease 2019 (COVID-19) in Colorado.

I. Background and Purpose

On March 5, 2020, the Colorado Department of Public Health and Environment's (CDPHE) public health laboratory confirmed the first presumptive positive coronavirus disease 2019 (COVID-19) test result in Colorado. Since then, the number of confirmed cases has continued to climb, and there is community spread throughout the State. I verbally declared a disaster emergency on March 10, 2020, and on March 11, 2020, I issued the corresponding Executive Order D 2020 003, as amended by Executive Orders D 2020 018, D 2020 032, D 2020 058, and D 2020 076. On March 25, 2020, I requested that the President of the United States declare a Major Disaster for the State of Colorado, pursuant to the Stafford Act. The President approved that request on March 28, 2020.

My administration, along with other State, local, and federal authorities, has taken a wide array of actions to mitigate the effects of the pandemic, prevent further spread, and protect against overwhelming our health care resources.

The virus that causes COVID-19 is spread primarily by close contact between people and through respiratory droplets when an infected person coughs or sneezes. It can also be spread through contact with contaminated surfaces. Public health experts recommend we practice social distancing, or maintaining a physical distance of six (6) feet or more from other people, as a way to slow the spread of COVID-19. This is especially important for vulnerable individuals as 90% of Colorado fatalities are individuals older than 60. Evidence shows that social distancing and the Stay at Home Executive Order D 2020 017, as amended, have helped to slow the increase of cases and rate of infection.

While we have seen indications that our efforts to "flatten the curve" are working, increased transmission of the virus continues to threaten Coloradans' way of life and livelihoods. As we take steps to return Coloradans to work, we must continue to practice social distancing at

a high level and implement other measures, such as limiting our social interactions, extra precautions for Vulnerable Individuals, and wearing non-medical masks while in public to facilitate a step towards reopening the economy while protecting public health. While this is another step toward resuming our daily lives, the State is monitoring the spread of COVID-19 and additional precautions may be necessary in the future.

On April 27, 2020, I issued Executive Order D 2020 044, Safer at Home, which implemented a number of measures that will allow many Coloradans to return to work while we maintain a sustainable level of social distancing.

This Executive Order amends and extends Executive Order D 2020 044, Safer at Home, for an additional eight (8) days to June 1, 2020.

II. Amendments

Executive Order D 2020 044 is amended as follows:

- i. Replace paragraph II.H.2.ii. with the following:

Travel to within their local community or as necessary to access outdoor recreation areas. If travelling outside their community, Coloradans are urged to honor all restrictions in place at their destination and avoid travel to counties or municipalities that issue travel restrictions.

- ii. Replace paragraph II.H.8. with the following:

Permit Places of Public Accommodation to offer food and beverage using delivery service, window service, walk-up service, drive-through service, drive-up service, curbside delivery, outside dining, limited indoor dining, or any other manner set forth in an existing Executive Order or PHO and in accordance with mandatory Social Distancing Requirements.

- iii. Strike paragraph II.O.1 and replace with a new paragraph II.P. that states:

P. Except as modified by this Executive Order, all Executive Orders issued due to COVID-19 that are currently in effect shall remain in full force and effect as originally promulgated.

- iv. Add a new paragraph II.Q. that states:

Q. CDPHE shall develop and issue guidance governing restaurants and summer camps. CDPHE may authorize public gatherings of groups in these settings that exceed the limits in paragraph II.H.3., above, if justified by public health conditions.

Executive Order D 2020 079

May 25, 2020

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III. Duration

Executive Order D 2020 044, as amended and extended by this Executive Order, shall expire on June 1, 2020, unless extended further by Executive Order. In all other respects, Executive Order D 2020 044 shall remain in full force and effect as originally promulgated.



GIVEN under my hand and the
Executive Seal of the State of
Colorado, this twenty-fifth day of
May, 2020

A handwritten signature in blue ink, reading "Jared Polis".

Jared Polis
Governor



COLORADO
Department of Public
Health & Environment

FOURTH AMENDED PUBLIC HEALTH ORDER 20-28 SAFER AT HOME
May 26, 2020

PURPOSE OF THE ORDER

I issue this Amended Public Health Order (PHO or Order) pursuant to the Governor's directive in **Executive Order D 2020 044 Safer at Home** and extended by **Executive Order D 2020 079** in response to the existence of thousands of confirmed and presumptive cases of Coronavirus disease 2019 (COVID-19) and related deaths across the State of Colorado. Further, as there is substantial evidence of community spread of COVID-19 throughout the State, it is crucial to take measures now that can mitigate further spread of disease in our communities.

FINDINGS

1. Governor Polis issued Executive Order D 2020 003 on March 11, 2020, declaring a disaster emergency in Colorado due to the presence of COVID-19. Since that time, the Governor has taken numerous steps to implement measures to mitigate the spread of disease within Colorado, and has further required that several public health orders be issued to implement his orders.
2. I have issued public health orders pertaining to the limitation of visitors and nonessential individuals in skilled nursing facilities, intermediate care facilities, and assisted living residences; closing bars and restaurants to in-person services; defining the terms of the Governor's stay at home requirements and critical business designations; requiring hospitals to report information relevant to the COVID-19 response; and requiring the wearing of face coverings in the workplace and urging their use in public. These measures all act in concert to reduce the exposure of individuals to disease, and are necessary steps to protect the health and welfare of the public. Additionally, in reducing the spread of disease, these requirements help to preserve the medical resources needed for those in our communities who fall ill and require medical treatment, thus protecting both the ill patients and the healthcare workers who courageously continue to treat patients.
3. As of May 24, 2020, there are 24,174 known cases of COVID-19 in Colorado, 4,119 Coloradans have been hospitalized and 1088 Coloradans have died from COVID-19. Multiple sources of data show that COVID-19 transmission and the use of healthcare due to COVID-19

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May 26, 2020

have leveled off in Colorado. Our work to “flatten the curve” appears to be succeeding, and the Governor has ordered some lessening of the current Safer at Home restrictions as a result.

4. **Executive Order D 2020 044** as amended and extended by **Executive Order D 2020 079** authorize transitioning from a stay at home model, as described in **Executive Order D 2020 017** and **Public Health Order 20-24** as amended, to a **Safer at Home** model. **Safer at Home** still requires that **Vulnerable Individuals** remain at home, but allows limited reopening of postsecondary institutions and certain businesses. Additionally, individuals are encouraged to stay at home as much as possible and practice Social Distancing to reduce the likelihood of disease transmission, but certain activities, such as gathering in groups of no more than ten for activities, are permitted. As we continue to combat COVID-19 in our communities, continuing restrictions on individual travel and necessary activities remain appropriate.

INTENT

This Order sets forth the requirements for implementation of Safer at Home, as directed by Governor Polis. Individual restrictions remain in place concerning limitations on activities, travel, and public gatherings. Workplace restrictions remain necessary to implement standard Social Distancing Requirements, cleaning standards, and other items necessary to reduce the possibility of disease spread. Additionally, certain businesses and activities require specific guidance based on their business practices, and those are included in the appendices to this Order.

ORDER

Unless otherwise specifically noted in this Order, the requirements of this Order are effective May 26, 2020 and expire on June 1, 2020. This Order supersedes and replaces Public Health Orders 20-22 and 20-24, as amended.

I. **Safer at Home**

A. All individuals currently living within the State of Colorado are encouraged to stay at home and avoid unnecessary interactions whenever possible in order to reduce the spread of disease. Individuals living in shared or outdoor spaces must at all times, to the greatest extent possible, comply with **Social Distancing Requirements**, defined in Section III below, and are encouraged to leave their residences only to perform or utilize **Necessary Activities**, defined in Section III below.

B. Individuals are urged to wear non-medical cloth face coverings that cover the nose and mouth whenever in public as required by **Executive Order D 2020 044** as amended and extended by **Executive Order D 2020 079**.

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C. All public and private gatherings are limited to no more than ten (10) individuals indoors, except for the purposes expressly permitted in this PHO, which include **Necessary Activities**. Nothing in this Order prohibits the gathering of members living in the same residence.

D. People at high risk of severe illness from COVID-19 are urged to stay in their residence at all times except as necessary to seek medical care. **Vulnerable Individuals** cannot be compelled to work for any business or government function, including a Critical Business or Critical Government Function, during the pendency of this pandemic emergency. People who are sick must stay in their residence at all times except as necessary to seek medical care, and must not go to work, even for a **Critical Business**, defined in Section III below.

E. Individuals experiencing symptoms of COVID-19 must self-isolate until their symptoms cease or until they have a negative test result. Due to limited testing availability and narrow criteria for testing, if an individual has tested positive for COVID-19 and/or has developed symptoms of COVID-19, including early or mild symptoms (such as cough and shortness of breath), they should be in isolation (staying away from others) until they have had no fever for at least seventy-two (72) hours (that is three full days of no fever without the use of medicine that reduces fevers), other symptoms have improved (such as cough or shortness of breath) and at least ten (10) days have passed since symptoms first appeared.

F. Governmental and other entities are strongly urged to make shelter available to people experiencing homelessness as soon as possible and to the maximum extent practicable, and are authorized to take all reasonable steps necessary to provide non-congregate sheltering along with necessary support services to members of the public in their jurisdiction as necessary to protect all members of the community. People experiencing homelessness are urged to protect their health and safety by complying with **Social Distancing Requirements** at all times.

G. Individuals are encouraged to limit travel to **Necessary Travel**, defined in Section III below, including but not limited to, travel by automobile or public transit. People must use public transit only for purposes of performing **Necessary Activities** or to travel to and from work to operate **Businesses** or maintain **Critical Governmental Functions** as authorized in Section II of this Order. People riding on public transit must comply with **Social Distancing Requirements** to the greatest extent feasible.

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H. Individuals may participate in local and personal recreation in outside public spaces, as an authorized **Necessary Activity**, in groups no larger than 10 and practicing social distancing maintaining 6 feet between participants. Travel should occur within an individual's local community or as necessary to access outdoor recreation areas. If travelling outside their community, Coloradans are urged to honor all restrictions in place at their destination and avoid travel to counties or municipalities that issue travel restrictions. Playgrounds, playground equipment, pools except for use for personal training, amusement parks and arcades remain closed. Personal training and classes in indoor settings are limited to all members of a single household or a mixed group of 4 or fewer individuals complying with **Social Distancing Requirements**; except for members of a single household, sharing equipment is prohibited.

1. Private campgrounds may open for use. Campground operators must regularly clean and disinfect all common areas, such as bathrooms, in accordance with the [CDPHE Cleaning Guidance](#). Group facilities, pavilions, cabins, and yurts remain closed. Campsites must be a minimum of 6 feet apart, and should only be available by reservation. Campground operators must post signs to remind guests of physical distancing requirements, and limit visitors in campground offices to maintain such distancing.

II. Business Requirements

If a business or industry is not specifically identified as a Critical Business as defined in Appendix F of this Order or identified as authorized to open in this Order or corresponding interpretive guidance found [here](#), it is not authorized to be open.

A. The following places of public accommodation remain closed to ingress, egress, use, and occupancy by members of the public:

1. Bars, taverns, brew pubs, breweries, microbreweries, distillery pubs, wineries, tasting rooms, special licensees, clubs, and other places of public accommodation offering alcoholic beverages for on-premises consumption and not serving meals;
2. Cigar bars;
3. Gyms, except for the limited purpose authorized in Section I.H;
4. Movie and performance theaters except for drive in movie theaters, opera houses, concert halls, and music halls;
5. Casinos; and
6. Horse tracks and simulcast facilities, also known as off-track betting facilities.

These restrictions do not apply to any of the following:

1. Room service in hotels;

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2. Health care facilities, residential care facilities, congregate care facilities, and juvenile justice facilities;
3. Crisis shelters or similar institutions;
4. Airport concessionaires;
5. Institutions of higher education offering dining hall services located in or adjacent to campus dormitories that are accessed through student, staff, faculty, or campus associated identification, as well as grab and go food services within these institutions, while exercising social distancing measures of at least six feet between individuals;
6. Fitness centers and nonessential personal services included in residential facilities, such as hotels, apartment or condominium complexes or similar housing arrangements, that are limited to use only by hotel guests or residents of the housing who are following social distancing requirements of at least 6 feet between individuals, and the hotel or property managers are performing frequent environmental cleaning; and
7. Any emergency facilities necessary for the response to these events.

B. All **Critical Businesses** and **Critical Government Functions**, as defined in Section III below, may continue to operate. **Critical Businesses** must comply with **Social Distancing Requirements** at all times, adopt work from home or tele-work policies for any operations that can be done remotely, and implement other strategies, such as staggered schedules or re-designing workplaces, to create more distance between workers unless doing so would make it impossible to carry out critical functions. **Critical Businesses** that serve the public such as grocery stores and other **Critical Retail** shall comply with **Social Distancing Requirements** at all times including, but not limited to, when any customers are standing in line. **Critical Business** and **Critical Government Functions** shall continue to promote telecommuting to the greatest extent possible.

C. All places of public accommodation subject to Public Health Order 20-22, as amended, that offer food and beverages may continue to offer food and beverage using delivery service, window service, walk-up service, drive-through service, drive-up service, curbside delivery or any manner set forth in that PHO and in accordance with mandatory **Social Distancing Requirements**, except as prohibited or limited by **Executive Orders D 2020 044** and **D 2020 079** or this Order. These entities include restaurants, food courts, cafes, coffeehouses, and other similar places of public accommodation offering food or beverage for on-premises consumption as or from a licensed retail food establishment, referred to in this Order as Restaurants; and bars, taverns, brew pubs, breweries, microbreweries, distillery pubs, wineries, tasting rooms, special licensees, clubs, and other places of public accommodation

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serving alcoholic beverages and, if serving food, only snacks and not kitchen-prepared meals, referred to in this Order as Bars.

1. Effective May 27, 2020, Restaurants may open to in-person dining at 50% of the indoor posted occupancy code limit, not to exceed 50 people, whichever is less. Tables or groups must be limited to no more than 8 people and be spaced so that patrons are a minimum of 6 feet apart. Restaurants may also use any existing, licensed outdoor space for in-person dining with the same group limit of 8 and minimum spacing of 6 feet apart. Restaurants must have or obtain approval from their local government's permitting, building and fire code oversight agency for any new outdoor dining space prior to use. Additional requirements for Restaurants are contained in **Appendix I**.

D. All **Non-Critical Retail**, as defined in Section III below, may operate and offer goods through delivery service, window service, walk-up service, drive-through service, drive-up service, curbside delivery, or any other manner allowing for strict compliance with mandatory social distancing requirements, similar to the requirements for **Critical Retail**. Additional requirements for **Critical** and **Non-Critical Retail** are contained in **Appendix A** of this Order.

E. All **Field Services**, including real estate, may resume operations, in accordance with the requirements of this Order including **Appendix B**. Real estate includes in-person real estate showings and marketing services which must adhere to **Social Distancing Requirements** with cleaning and disinfection between each showing, but may not hold open houses.

F. Other health care services not covered by **Executive Order 20 044 Voluntary or Elective Surgeries Or Procedures**, in certain limited healthcare settings may resume if done in accordance with the requirements of **Appendix E**.

G. Effective May 1, 2020, **Non-Critical Retail** and limited **Personal Services** may resume in-person services if they meet the requirements in Section II.I below and the additional requirements outlined for these services in **Appendices A** and **D** of this Order.

H. Effective May 4, 2020, the following businesses may reopen in accordance with the requirements of this Order:

1. **Non-Critical Office-Based Businesses** operating in an office and not a production environment, as defined in Section III below, may allow up to fifty (50) percent of their employees to conduct in-person work that takes place outside a private residence in accordance with the requirements in Section II.I below and the additional requirements outlined in **Appendix C**.

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2. **Non-Critical Manufacturing** operating in a production environment with no more than ten (10) employees that comply with the requirements in Section II.I below and the additional requirements in **Appendix H**.

I. All Business and Government Functions. Critical Businesses, Critical Government Functions, Non-Critical Office-Based Businesses, Personal Services, Limited Healthcare Settings, and Non-Critical Retail shall all follow the protocols below:

1. Employers and sole proprietors shall take all of the following measures within the workplace to minimize disease transmission, in accord with the [CDPHE Guidance](#):

- a. deputize a workplace coordinator(s) charged with addressing COVID-19 issues;
- b. maintain 6 foot separation between employees and discourage shared spaces;
- c. [clean and disinfect](#) all high touch areas;
- d. post signage for employees and customers on good hygiene;
- e. ensure proper ventilation;
- f. avoid gatherings (meetings, waiting rooms, etc) of more than 10 people;
- g. implement symptom monitoring protocols, conduct daily temperature checks and monitor symptoms in employees at the worksite to the greatest extent possible, or if not practicable, through employee self-assessment at home prior to coming to the worksite. A sample form can be found [here](#). If an employee reports any symptoms, refer symptomatic employees to the [CDPHE Symptom Tracker](#) and take all of the following steps:
 1. send employee home immediately;
 2. increase cleaning in your facility and require social distancing of staff at least 6 feet apart from one another;
 3. exclude employee until they are fever-free, without medication, for 72 hours and 10 days have passed since their first symptom; and
 4. if multiple employees have these symptoms, contact your local health department; and
- h. eliminate or regularly [clean and disinfect](#) any items in common spaces, such as break rooms, that are shared between individuals, such as condiments, coffee makers, vending machines.

2. Employers shall take all of the following measures regarding employees to

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minimize disease transmission:

- a. require employees to stay home when showing any symptoms or signs of sickness, and connect employees to company or state benefits providers;
- b. provide work accommodations for **Vulnerable Individuals**, who remain subject to **Stay at Home** advisement, prioritizing telecommuting, as **Vulnerable Individuals** shall not be compelled to go to work during the pendency of this pandemic emergency;
- c. provide to the greatest extent possible flexible or remote scheduling for employees who may have child or elder care obligations, or who live with a person who still needs to observe **Stay at Home** due to underlying condition, age, or other factor;
- d. encourage and enable remote work whenever possible;
- e. encourage breaks to wash hands or use hand sanitizer;
- f. phase shift and breaks to reduce density; and
- g. provide appropriate protective gear like [gloves, masks, and face coverings](#) as defined by [OSHA industry standards](#).

3. Employers and sole proprietors shall implement the following measures regarding customers to minimize disease transmission:

- a. create whenever possible special hours for **Vulnerable Individuals** only;
- b. encourage 6 foot distancing inside of the business for all patrons;
- c. encourage customer use of protection like gloves and face coverings;
- d. provide hand sanitizer at the entrances to the greatest extent possible; and
- e. use contactless payment solutions, no touch trash cans, etc. whenever possible.

4. Employers with over fifty (50) employees in any one location shall, in addition to the above requirements, implement the following protocols:

- a. implement employee screening systems that follow the requirements of Section II.I.1.g above in one of the following ways:
 - i. Set up stations at the worksite for symptom screening and temperature checks; or
 - ii. Create a business policy that requires at-home employee self-screening each work day and reporting of the results to the employer prior to entering the worksite;

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- b. close common areas to disallow gatherings of employees;
- c. implement mandatory cleaning and disinfection protocols; and
- d. require mandatory adherence to **Social Distancing Requirements**.

J. Work Accommodations. Employers must provide reasonable work accommodations for **Vulnerable Individuals** who are still under the **Stay at Home** advisement, such as telecommuting. Employers are encouraged to provide reasonable work accommodations for individuals who reside with or are caring for **Vulnerable Individuals**, or facing child care needs while schools remain closed.

K. Children's Day Camps and Youth Sports Camps. Effective June 1, 2020, children's day camps and youth sports camps may open in accordance with the requirements in **Appendix J** of this Order. Residential camps are not authorized to open at this time.

L. Specific Industry Requirements. Additional requirements for specific industries are included in the following Appendices to this Order:

- 1. Appendix A: Critical and Non-Critical Retail Requirements
- 2. Appendix B: Field Services
- 3. Appendix C: Non-Critical Office-Based Businesses
- 4. Appendix D: Personal Services
- 5. Appendix E: Limited Healthcare Settings
- 6. Appendix H: Non-Critical Manufacturing
- 7. Appendix I: Restaurants
- 8. Appendix J: Children's Day Camps and Youth Sports Day Camps

III. Definitions

A. Necessary Activities. For purposes of this PHO, individuals are encouraged to only leave their Residence to perform any of the following **Necessary Activities**, provided they comply at all times and to the greatest extent possible with **Social Distancing Requirements** below. People at high risk of severe illness from COVID-19 are urged not to leave their residence except as necessary to receive medical care. People who are sick must not leave their residence except as necessary to receive medical care, and must not go to work, even for a **Critical Business**. **Necessary Activities** include:

- 1. Engaging in activities or perform tasks essential to their health and safety, or to the health and safety of their family or household members, including, but not limited to, pets and livestock, such as, by way of example only and without limitation, obtaining medical supplies, walking your dog, feeding barnyard animals, obtaining durable medical equipment, obtaining medication, visiting a healthcare professional, or obtaining supplies they need to work from home.

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2. Obtaining necessary services or supplies for themselves and their family or household members, or to deliver those services or supplies to others, such as, by way of example only and without limitation, food, pet supply, other household consumer products, and products or equipment necessary to maintain the safety, sanitation, and essential operation of a Residence.
3. Engaging in outdoor activity, such as, by way of example and without limitation, walking, hiking, nordic skiing, snowshoeing, biking or running. For purposes of outdoor activity, State parks will remain open to the public who live in the vicinity to engage in walking, hiking, biking, running, camping and similar outdoor activities, basketball and tennis courts may be open for use by individuals or members of the same household only, but all playgrounds, picnic areas, other similar areas conducive to public gathering, and attended areas shall be closed. For other parks, check with the local jurisdiction and follow any requirements for that jurisdiction. For ski resorts, the local public health agency must approve the ski resort's plan prior to opening. Additionally, the permitted outdoor activities in this PHO do not include activities that would violate the **Social Distancing Requirements** defined in Section III, below.
4. Performing work providing for businesses, government entities, and industries authorized Section II of this Order, or to otherwise carry out activities permitted in this Order.
5. Caring for a family member, a vulnerable person, or pet in another household, or to care for livestock kept at a location other than an individual's home.

B. Necessary Travel. For purposes of this Order, travel is Necessary for any of the following purposes: (1) providing or accessing **Necessary Activities, Minimum Basic Operations, Critical Government Functions**, and **Critical Businesses**, and other businesses or industries authorized in Section II of this Order; (2) receiving materials for distance learning, for receiving meals, and any other related services from educational institutions; (3) returning to a place of residence from outside the jurisdiction; (4) travel required by law enforcement or court order; (5) travel to transport children between separate households pursuant to a parenting plan or other agreement governing parental responsibilities; (6) non-residents returning to their place of residence; (7) moving to a new residence, including individuals whose Residence is unsafe due to domestic violence concerns.

C. Critical Business. Any business, including any for profit or non-profit, regardless of its corporate structure, engaged primarily in any of the commercial, manufacturing, or service activities listed in **Appendix F**, must continue to comply with the guidance and directives for maintaining a clean and safe work environment issued by the Colorado Department of Public Health and Environment (CDPHE) and any applicable local health department.

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Critical Businesses must comply with **Social Distancing Requirements** and all PHOs currently in effect to the greatest extent possible and will be held accountable for doing so. A list of Critical Businesses is contained in **Appendix F** to this Order.

D. Critical Government Functions. The provision, operation and support of the following state and local government functions shall continue:

1. Public safety (police stations, fire and rescue stations, correctional institutions, emergency vehicle and equipment storage, and, emergency operation centers)
2. Emergency response
3. Judicial branch operations including state and municipal courts, including attorneys if necessary for ongoing trials and required court appearances, unless appearances can be done remotely
4. The Colorado General Assembly, legislative bodies of municipal governments, and executive branch functions
5. Emergency medical (hospitals, ambulance service centers, urgent care centers having emergency treatment functions, and non-ambulatory surgical structures but excluding clinics, doctors offices, and non-urgent care medical structures that do not provide these functions)
6. Designated emergency shelters
7. Communications (main hubs for telephone, broadcasting equipment for cable systems, satellite dish systems, cellular systems, television, radio, and other emergency warning systems, but excluding towers, poles, lines, cables, and conduits)
8. Public utility plant facilities for generation and distribution (drinking water and wastewater infrastructure, hubs, treatment plants, substations and pumping stations for power and gas, but not including towers, poles, power lines, and oil and gas buried pipelines)
9. Transportation. All public and private airports, airlines, taxis, transportation network companies (such as Uber and Lyft), vehicle rental services, paratransit, and other private, public, and commercial transportation and logistics providers necessary for **Necessary Activities**
10. Transportation infrastructure (aviation control towers, air traffic control centers, and emergency equipment aircraft hangars), critical road construction and maintenance
11. Hazardous material safety
12. Services to at-risk populations and **Vulnerable Individuals**
13. Activities related to federal, state, and local elections, including any required acts of a political party, provided **Social Distancing Requirements** are observed to the greatest extent possible

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14. Any government service, state or local, required for the public health and safety, government functionality, or vital to restoring normal services

15. Election operations, including but not limited to election judges, signature gatherers/circulators, campaign workers and volunteers

E. Field Services means a service that is being provided out in the field as opposed to a company property, including third party private properties, such as a third party household.

F. Gym means a building or room used for indoor sports or exercise, such as fitness, dance, exercise or group classes, exercise studios and centers, recreation centers, bowling alleys, pools, and other indoor athletic facilities.

G. Horse track means a licensed race track, which is any premises licensed pursuant to this Article 32 of Title 44 of the Colorado Revised Statutes for the conduct of racing. Sections 44-32-102(2)(a), (2)(b), (3), (8) & (24), C.R.S.

H. Minimum Basic Operations. The minimum necessary activities to (1) maintain the value of the business's inventory, ensure security, process payroll and employee benefits, or for related functions; or (2) facilitate employees of the business being able to continue to work remotely from their residences are allowable pursuant to this Order; continue filling online product orders and to process customer orders remotely. Any business supporting **Minimum Basic Operations** must comply at all times with **Social Distancing Requirements**.

I. Non-Critical Office-Based Business means any commercial business that is conducted in an office and not a production environment and is not included in the list of **Critical Businesses** in **Appendix F**.

J. Non-Critical Retail means any retail service that is not included in the list of critical retail services in **Appendix F**. Examples of **Non-Critical Retail** include retailers of clothing, home goods, cell phone stores, mattresses, appliances, thrift shops, apothecaries, vape and tobacco shops, craft, hobby and fabric stores, fishing tackle retailers, sporting goods, boutiques, etc.

K. Limited Healthcare Settings means those locations where certain healthcare services are provided, including acupuncture (not related to personal services), athletic training (not related to personal services), audiology services, services by hearing aid providers, chiropractic care, massage therapy (not related to personal services), naturopathic care, occupational therapy services, physical therapy, and speech language pathology services. These individual services may only be performed with 10 or fewer people in a common business space

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at a maximum of 50% occupancy for the location, whichever is less, including both employees and patients, e.g. 5 chiropractors providing services to 5 customers, with **Social Distancing Requirements** in place of 6 feet distancing between customers receiving services. Employees must wear medical grade masks at all times, and patients must wear at least a [cloth face covering](#) at all times. Services provided in **Limited Healthcare Settings** that are ordered by a medical, dental or veterinary practitioner, are subject to the requirements of Reference PHO 20-29; otherwise, the services are subject to the requirements of PHO 20-28.

L. Personal Services means services and products that are not necessary to maintain an individual's health or safety, or the sanitation or essential operation of a business or residence. **Personal Services** include, but are not limited to, pastoral services except as specified in **Appendix F**, personal training, dog grooming, or body art and also applies to noncritical professionals regulated by the Division of Professions and Occupations, within the Department of Regulatory Agencies (DORA) including but not limited to services provided by personal beauty professionals such as hairstylists, barbers, cosmetologists, estheticians, nail technicians, as well as massage therapists, whose work requires these professionals to be less than six feet from the person for whom the services are being provided. Massage therapy services ordered by a healthcare professional should consult **Executive Order D 2020 027**. These individual services may only be performed with 10 or fewer people in a common business space at a maximum of 50% occupancy for the location, whichever is less, including both employees and customers, e.g. 5 hairstylists providing services to 5 customers, with **Social Distancing Requirements** of at least 6 feet distancing between different customers receiving services. Both employees and customers must wear at least a cloth face covering or a medical grade mask at all times. Only services that can be performed without the customer removing their mask are permitted.

M. "Safer at Home" means individuals stay in your place of residence as much as possible, and avoid unnecessary social interactions.

N. Social Distancing Requirements. To reduce the risk of disease transmission, individuals shall maintain at least a six-foot distance from other individuals, wash hands with soap and water for at least twenty seconds as frequently as possible or using hand sanitizer, cover coughs or sneezes (into the sleeve or elbow, not hands), regularly clean high-touch surfaces, and not shake hands.

O. Simulcast facility means a licensed in-state simulcast facility pursuant to this Article 32 of Title 44 of the Colorado Revised Statutes, also commonly referred to as an "off-track betting facility" or "OTB". Sections 44-32-102(11) & (21), C.R.S.

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P. Stay at Home means to stay in your place of residence, which includes hotels, motels, and shared rental facilities, and not leave unless necessary to provide, support, perform, or operate **Necessary Activities, Minimum Basic Operations, Critical Government Functions, and Critical Businesses**.

Q. “Vulnerable Individual” means:

1. Individuals who are 65 years and older;
2. Individuals with chronic lung disease or moderate to severe asthma;
3. Individuals who have serious heart conditions;
4. Individuals who are immunocompromised;
5. Pregnant women; and
6. Individuals determined to be high risk by a licensed healthcare provider.

IV. Postsecondary Institutions. Programs and courses at postsecondary institutions that cannot be conducted remotely, generally due to equipment requirements, may be conducted through limited in-person instruction. Institutions that wish to resume providing in-person instruction must inform the Colorado Department of Higher Education and ensure that **Social Distancing Requirements** are strictly followed. Additionally, students are allowed to opt out of the in-person instruction; such students will be treated no differently than students in all other courses that have ceased in-person instruction due to the COVID-19 situation.

V. Variance Requests. Any Colorado county may request a variance from the Colorado Department of Public Health and Environment authorizing implementation of an alternative COVID-19 suppression plan that differs from part or all the requirements of **Executive Order D 2020 044** or this Order. The variance request must include an alternative COVID-19 suppression plan endorsed by the local public health agency and adopted by the county commissioners or other county-level governing body, in addition to verification from local hospitals that they have the capacity to serve all people needing their care. Further guidance on variance requests is contained in **Appendix G**.

VI. Enforcement

This Order will be enforced by all appropriate legal means. Local authorities are encouraged to determine the best course of action to encourage maximum compliance. Failure to comply with

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this order could result in penalties, including jail time, and fines, and may also be subject to discipline on a professional license based upon the applicable practice act.

VII. Severability

If any provision of this Order or the application thereof to any person or circumstance is held to be invalid, the remainder of the Order, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Order are severable.

VIII. Duration

This Order shall become effective on Tuesday May 26, 2020 and will expire on June 1, 2020, unless extended, rescinded, superseded, or amended in writing.



Jill Hunsaker Ryan, MPH
Executive Director

May 26, 2020
Date

Appendix A. Critical and Non-Critical Retail Requirements

Appendix B. Field Services

Appendix C. Non-Critical Office-Based Businesses

Appendix D. Personal Services

Appendix E. Limited Healthcare Settings

Appendix F. Critical Businesses List

Appendix G. County Variance Requests

Appendix H. Non-Critical Manufacturing

Appendix I. Restaurants

Appendix J. Children's Day Camps and Youth Sports Day Camps

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APPENDIX A. CRITICAL AND NON-CRITICAL RETAIL REQUIREMENTS

I. Effective April 27, 2020, in addition to meeting the requirements of this Order, and specifically Section II.I, **Non-Critical Retail** may operate and offer goods through delivery service, window service, walk-up service, drive-through service, drive-up service, curbside delivery, or any other manner allowing for strict compliance with mandatory **Social Distancing Requirements**, except as prohibited or limited by this Order. Restricting interactions to curbside pick-up or delivery minimizes touch. **Non-Critical Retailers** are encouraged to continue curbside pick-up or delivery for longer term service wherever possible. **Critical and Non-Critical Retailers** must implement the requirements in Section II.I, in addition to the specific requirements in this Appendix. Indoor malls are addressed separately in Section III of this **Appendix**. Libraries, both public and private, are limited to providing window service, walk-up service, drive-through service, or curbside delivery.

A. Critical and Non-Critical Retail must implement the following measures within the workplace to minimize disease transmission:

1. Elevate and increase frequency of [cleaning practices](#), including cleaning and disinfection of high touch areas.
2. Restrict return policy to only items that can be properly sanitized prior to re-selling.
3. Post signage for employees and customers on good hygiene and other sanitation practices.

B. Critical and Non-Critical Retail must implement the following measures regarding employees to minimize disease transmission:

1. Provide guidance and encouragement on maintaining 6 foot distancing between both employees and employees and customers.
2. Provide appropriate face coverings and gloves to all employees whenever possible, and also allow employees who can to provide their own appropriate face coverings and gloves for work activities. Employees without face coverings shall not perform tasks that require engagement with the public or with other coworkers.
3. Encourage frequent breaks to allow employees to wash or sanitize their hands.

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4. Require employees to stay home when showing any symptoms or signs of sickness.
5. Provide personal protective equipment (PPE) for employees who are managing deliveries, returns, etc.

C. Employers must implement the following measures regarding customers to minimize disease transmission:

1. Require 6 foot distancing measures wherever possible, such as marked space in pick up lines.

II. Effective May 1, 2020, **Non-Critical Retail** may open at fifty percent (50%) capacity for in-person services if the business can demonstrate compliance with all of the following requirements:

A. **Critical and Non-Critical Retail** must continue implementing the measures within the workplace listed in Section I.A of this **Appendix A**, and in addition:

1. maintain 6 foot distancing between patrons and employees;
2. effectively symptom monitor employees as listed in Section II.I;
3. provide face coverings, and gloves as necessary and appropriate, to employees;
4. ensure ability to adequately clean and disinfect both back-room and retail spaces; and
5. provide dedicated, in-store hours for vulnerable or at-risk individuals.

B. **Critical and Non-Critical Retail** must implement the measures regarding employees listed in Section I.B of this **Appendix A**.

C. **Critical and Non-Critical Retail** must implement the measures to minimize disease transmission for customers listed in Section I.C of this **Appendix A** in addition to the following measures:

1. limit the number of customers on the premises as needed to make 6 foot distancing between customers attainable;
2. provide decals and demarcation for waiting area in lines that meet social distancing criteria;
3. create signage encouraging vulnerable and at-risk individuals to refrain from shopping outside of dedicated hours set aside for those who are more vulnerable or at-risk;

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4. create signage to encourage the use of masks and gloves by customers while on the premises; and
5. provide hand sanitizer and wipes at entrances and other high-traffic locations to the greatest extent possible.

III. Indoor Malls. Indoor malls must not open to the public for entry. Retailers operating in indoor malls that have their own exterior entrance from the outside may operate as all other **Non-Critical Retail** in accordance with this **Appendix**. Retailers and service providers operating in an indoor mall that do not have their own exterior entrance from the outside remain closed; however, these vendors may establish delivery service, including curbside delivery, in strict compliance with mandatory **Social Distancing Requirements**.

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APPENDIX B: FIELD SERVICES

I. Effective April 27, 2020, **Field Services** may resume if the business can demonstrate compliance with the requirements in Section II.I of this Order, in addition to the following requirements specific to **Field Services**:

A. Employers must implement the following measures regarding employees to minimize disease transmission:

1. adhere to all general rules or guidance on social gathering limitations when working out of the office;
2. implement procedures for field-based employees to monitor for symptoms and report-in to management daily on health status.
3. comply with the **Social Distancing Requirements** and maintain a 6 foot distance between employees and from their customers;
4. provide gloves and masks for any customer interactions or work being done in third-party home or office spaces;
5. When scheduling or conducting field services, either the employer or an employee must inquire whether third-party homes have individuals symptomatic for COVID-19 or have been in contact with known positive cases, and exercise caution when inside the home and interacting with anyone in the home if they do;
6. maintain a detailed log of customer interactions to enable contact tracing if it becomes necessary. The log should include name, date, and location of contact, as well as the contact's phone number and/or email address;
7. require that all tools or equipment be sanitized after each customer visit;
8. prioritize work accommodations for **Vulnerable Individuals**, prioritizing telecommuting;
9. provide guidance and encouragement on personal sanitation, including frequently washing hands. This guidance should include all of the following:
 - a. frequently and thoroughly wash your hands with soap and water for at least 20 seconds. If soap and water are not available, use hand sanitizer with at least 60% alcohol;
 - b. cover coughs and sneezes with a tissue, then throw the tissue in the trash, or use your inner elbow or sleeve;
 - c. avoid touching your eyes, nose, and mouth with unwashed hands;
 - d. stay home if you're sick, and keep your children home if they are sick; and

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e. clean high touch surfaces in your home, and personal items such as cell phones, using regular household products.

B. Employers must implement the following measures regarding customers to minimize disease transmission:

1. provide estimates, invoices, receipts, and other documentation electronically to negate the need for paper;
2. provide contactless payment options in the field whenever possible;
3. encourage customers to maintain 6 foot distancing from field service employees; and
4. encourage customers to use facial coverings when field services are being conducted.

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APPENDIX C: NON-CRITICAL OFFICE-BASED BUSINESSES

I. Effective May 4, 2020, **Non-Critical Office-based Businesses** may resume at fifty percent (50%) of their in-office occupancy if the business can demonstrate compliance with the requirements of this Order, including Section II.I, and all of the following:

A. Employers must implement the following measures within the workplace to minimize disease transmission:

1. ensure a minimum of 6 feet of space between all desks and workspaces;
2. modify the flow of people traffic to minimize contacts, such as identifying doors for entry or exit only;
3. conduct standard office cleaning with increased frequency and supplement with sanitization of high touch areas, in accord with [CDPHE guidelines](#);
4. provide employees with cleaning and disinfecting products and guidance on daily workspace cleaning routines; and
5. post signage for employees and customers on good hygiene and new office practices.

B. Employers must implement the following measures regarding employees to minimize disease transmission:

1. maintain in-office occupancy at no more than 50% of total by maximizing use of telecommuting and developing in-office rotation schedules;
2. minimize the number of in-person meetings and maintain 6 foot distancing in those meetings;
3. provide guidance and encouragement on maintaining 6 foot distancing and taking breaks to wash hands;
4. require gloves and masks for any customer interactions; and
5. allow telecommuting to the greatest extent possible.

C. Employers must implement the following measures regarding customers to minimize disease transmission:

1. require 6 foot distancing measures wherever possible, such as marked space in check-out lines;
2. encourage customers to use facial coverings when on the business premises;
3. provide hand sanitizer at entrances and other high-traffic locations; and
4. implement hours where service is only provided to **Vulnerable Individuals** if possible.

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APPENDIX D: PERSONAL SERVICES

I. Effective May 1, 2020, **Personal Services** may resume if the business can demonstrate compliance with the requirements of this Order, including Section II.I, and all of the following:

A. Employers and sole proprietors must implement the following measures within the workplace to minimize disease transmission:

1. Employ strict hygiene guidelines and cleaning and disinfection procedures for all contact surfaces and tools, in accordance with [CDPHE Worker and Customer Protection Guidelines for Non-Healthcare Industries](#);
2. Ensure a minimum of 6 feet of separation between clients and customers, including services for pets, when not directly performing service;
3. Post signage for employees and customers on good hygiene and safety measures being taken;
4. Minimize in-home and in-facility services with remote alternatives whenever possible, such as drive-by services or virtual meetings; and
5. Limit individuals, including employees and customers, to no more than 10 people in a common business space at a maximum of 50% occupancy, and all businesses offering services in individual rooms must comply with the requirements of this Order for each room.

B. Employers must implement the following measures regarding employees to minimize disease transmission:

1. Services with close personal contact, such as beauty professionals, massage, etc., must implement the following:
 - a. wear a face covering and gloves at all times, or, if wearing gloves is not feasible or appropriate, meticulous hand washing;
 - c. change gloves and wash hands between every individual or pet served;
 - d. clean and disinfect all shared equipment and tools between every individual or pet served; and
 - e. maintain a detailed log of customer interactions to enable contact tracing if it becomes necessary. The log should include name, date, details of services performed, and location of contact, as well as the contact's phone number and/or email address.
2. Personal services with low personal contact, such as movers or repair services, must implement the following:

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- a. maintain a minimum of 6 feet of separation between customers and adhere to social gathering limits of no more than 10 people. For real estate work, open houses are prohibited;
- b. require face coverings and, if feasible, gloves for any customer interactions; and
- c. provide guidance on strict hygiene precautions to employees.

C. Personal Services must implement the following measures regarding customers to minimize disease transmission:

1. provide customer services by appointment only, do not allow walk-ins or waiting for an appointment, and limit all group classes of any kind for individuals or for pets, pet training classes, or other activities associated with picking up pets to no more than 10 customers at a time and all following **Social Distancing Requirements**;
2. require customers to wear face coverings; if a customer does not have a mask, a "disposable mask" could be provided;
3. conduct symptoms check for all customers of services with close personal contact and decline to provide services to anyone who has symptoms. A sample form can be found [here](#); and
4. provide contactless payment options whenever possible.

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APPENDIX E: LIMITED HEALTHCARE SETTINGS

I. Effective April 27, 2020, **Limited Healthcare Settings** may resume if the healthcare entity can demonstrate compliance with the requirements of this Order, including Section II.I and may restart voluntary and elective surgeries and procedures in limited healthcare facilities and offices with required personal protective equipment (PPE) in accord with the priorities, requirements, and specific criteria below.

- A.** Employers and sole proprietors of **Limited Healthcare Settings** must implement the following measures within the overall workplace, including administrative and front office operations, to minimize disease transmission:
1. The practice must have access to adequate PPE in order to sustain recommended PPE use for its workforce for two weeks without the need for emergency PPE-conserving measures. If a practice proposes to extend the use of or reuse PPE, it must follow CDC guidance.¹
 2. The practice must implement strict infection control policies as recommended by the CDC.²
 3. The practice must ensure a minimum of 6 feet of separation between clients and patients, when not directly performing service, with no more than ten (10) people in a common business space at a maximum of 50% occupancy, and all settings offering services in individuals rooms must comply with the requirements of this Order for each room.
 4. The practice must post signage for employees and patients on good hygiene and safety measures being taken.
 5. The practice must minimize in-home and in-facility services with remote alternatives whenever possible, such as drive-by services or virtual meetings.
 6. Practices must maintain a plan to reduce or stop voluntary and elective surgeries and procedures should a surge/resurgence of COVID-19 cases occur in their region.
- B.** Employers of **Limited Healthcare Settings** must implement the following measures regarding employees to minimize disease transmission:
1. Services with close, direct personal contact must implement the following:
 - a. wear medical grade mask and gloves at all times;
 - b. change gloves and wash hands between every patient;

¹ <https://www.cdc.gov/coronavirus/2019-ncov/hcp/ppe-strategy/index.html>

² <https://www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control.html>

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- c. clean and disinfect all shared equipment and tools between every patient; and
 - d. maintain a detailed log of patient interactions to enable contact tracing if it becomes necessary. The log should include name, date, details of services performed, and location of contact, as well as the contact's phone number
- 2. Services with low personal contact must implement the following:
 - a. maintain a minimum of six 6 feet of separation between customers and limit to no more than ten (10) people in a common business space at a maximum of 50% occupancy.
 - b. require face coverings and, if feasible, gloves for any customer interactions; and
 - c. provide guidance on strict hygiene precautions to employees.
- 3. The practice must require all administrative personnel to wear a facemask, that can be cloth if necessary. Masks may be removed when social distancing of at least 6 feet if possible (e.g., after entering a private office). In order to ensure staff can take off their masks for meals and breaks, scheduling and location for meals and breaks should ensure that at least a 6-foot distance can be maintained between staff when staff needs to remove their mask. It is important for healthcare settings to emphasize that hand hygiene is essential to maintaining employee safety, even if staff are wearing masks. If the facemask is touched, adjusted or removed, hand hygiene should be performed.

C. Limited Healthcare Settings must implement the following measures regarding customers to minimize disease transmission:

- 1. The practice must provide services by appointment only, do not allow walk-ins or waiting for an appointment;
- 2. The practice must require patients to wear face coverings; if a patient does not have a mask, a "disposable medical mask" could be provided;
- 3. The practice must conduct symptom checks for all patients, decline to provide services to anyone who has symptoms, and refer them to their primary care physician. A sample form can be found [here](#); and
- 4. The practice must provide contactless payment options whenever possible;
- 5. The practice must follow social distancing protocols of maintaining at least a 6-foot distance between individuals wherever possible such as in waiting rooms and other small spaces, and should use physical barriers within patient care areas when possible.
- 6. The practice must appropriately schedule patients, so that providers have sufficient time to change PPE and ensure rooms and equipment can be cleaned and disinfected between each patient.

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7. The practice should continue to maximize the use of telehealth and virtual office or clinic visits.
8. The practice should use virtual waiting rooms when possible, with patients who are able to wait in their cars not entering the office until they can be moved immediately to an exam room.
9. The practice should implement source control for everyone entering the office or clinic, including requiring all patients and visitors to wear a cloth mask when entering any healthcare building, and if they arrive without a mask, one should be provided.

D. As best practice, it is recommended that once voluntary and elective surgeries and procedures resume, **Limited Healthcare Settings** reassess their operations every two weeks, in order to ensure:

1. All of the above approaches and criteria are being met;
2. Procedures are prioritized based on whether their continued delay will have an adverse health outcome.
 - a. Voluntary and elective surgeries and procedures should be prioritized based on indication and urgency³;
3. Strong consideration is given to the balance of risks versus benefits for patients in higher-risk groups such as those over age 65 and those with compromised immune systems or lung and heart function;
4. All patients are pre-screened for COVID-19 risk factors and symptoms prior to delivering care, via telehealth when applicable; and
5. Compliance with the guidance and directives for maintaining a clean and safe work environment issued by the CDPHE and any applicable local health department for critical businesses is maintained, including compliance with **Social Distancing Requirements** and all PHOs currently in effect to the greatest extent possible.

³ Urgent and emergent care should continue in accordance with OHA and CMS guidance.

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APPENDIX F: CRITICAL BUSINESSES

Critical Business. Any business, including any for profit or non-profit, regardless of its corporate structure, engaged primarily in any of the commercial, manufacturing, or service activities listed below, may continue to operate as normal. **Critical Businesses** must comply with the guidance and directives for maintaining a clean and safe work environment issued by the Colorado Department of Public Health and Environment (CDPHE) and any applicable local health department. **Critical Businesses** must comply with **Social Distancing Requirements** and all PHOs currently in effect to the greatest extent possible and will be held accountable for doing so. **Critical Businesses** do NOT include health clubs as defined in C.R.S. § 6-1-102(4.6), fitness and exercise gyms, and similar facilities, or any of the other businesses required to close by PHO 20-22.

“Critical Business” means:

1. Healthcare Operations, Including:

- Hospitals, clinics, and walk-in health facilities
- Medical and dental care, including ambulatory providers
- Research and laboratory services
- Medical wholesale and distribution
- Home health care companies, workers and aides
- Pharmacies
- Pharmaceutical and biotechnology companies
- Behavioral health care providers
- Veterinary care and livestock services
- Nursing homes, residential health care, or congregate care facilities
- Medical supplies and equipment manufacturers and providers, including durable medical equipment technicians and suppliers
- Blood banks

2. Critical Infrastructure, Including:

- Utilities and electricity, including generation, transmission, distribution and fuel supply
- Road and railways
- Oil and gas extraction, production, refining, storage, transport and distribution
- Public water and wastewater

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- Telecommunications and data centers
- Transportation and infrastructure necessary to support critical businesses
- Hotels, and places of accommodation, excluding private, short-term vacation-style rentals such as those arranged through an online hosting platform, including but not limited to VRBO or Airbnb, homeowner rentals, and privately owned residences for rent that are rented for a period of 30 days or fewer, except if offered for use for the public health response.
- Businesses and organizations that provide food, shelter, social services, and other necessities of life for economically disadvantaged, persons with access and functional needs, or otherwise needy individuals
- Food and plant cultivation, including farming crops, livestock, food processing and manufacturing, animal feed and feed products, rendering, commodity sales, and any other work critical to the operation of any component of the food supply chain
- Any business that produces products critical or incidental to the construction or operation of the categories of products included in this subsection
- Flight schools, but only for the purpose of FAA-required pilot proficiency, and currency activities and practical checkrides, not for elective routine flight instruction

3. Critical Manufacturing, Including:

- Food processing, manufacturing agents, including all foods and beverages
- Chemicals
- Computers and computer components
- Medical equipment, components used in any medical device, supplies or instruments
- Pharmaceuticals
- Sanitary products
- Telecommunications
- Microelectronics/semiconductor
- Agriculture/farms
- Household paper products
- Any business that produces products critical or incidental to the processing, functioning, development, manufacture, packaging, or delivery of any of the categories of products included in this subsection
- Any manufacturing necessary to support a **Critical Business**

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4. Critical Retail, Including:

- Grocery stores including all food and beverage stores
- Farm and produce stands
- Gas stations and convenience stores
- Restaurants and bars (for take-out/delivery only as necessary under **Executive Order D 2020 011** and **PHO 20-22**, as amended)
- Marijuana dispensary (only for the sale of medical marijuana or curbside delivery pursuant to **Executive Order D 2020 011**)
- Liquor stores
- Firearms stores
- Hardware, farm supply, and building material stores
- Establishments engaged in the retail sale of food and any other household consumer products (such as cleaning and personal care products), excluding retailers of only health and nutrition-related products (vitamins, minerals, supplements, herbs, sports nutrition, diet and energy products)
- Establishments engaged in the sale of products that support working from home (this exclusion does not include businesses that primarily sell hobby craft supplies)

5. Critical Services, Including:

- Trash, compost, and recycling collection, processing and disposal
- Mail and shipping services, and locations that offer P.O. boxes
- Self-serve laundromats and garment and linen cleaning services for critical businesses
- Building cleaning and maintenance
- Child care services
- Automobile rental, automobile online sales with no touch delivery service, auto supply and repair (including retail dealerships that include repair and maintenance, but not in person retail sales)
- Warehouse/distribution and fulfillment, including freight distributors
- Funeral homes, crematoriums, and cemeteries, with strict compliance with **Social Distancing Requirements** for employees and any attendees of services
- In-person pastoral services for individuals who are in crisis or in need of end of life services provided social distancing is observed to the greatest extent possible. Houses of worship may remain open, however, these

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institutions are encouraged to implement electronic platforms to conduct services whenever possible or to conduct smaller (10 or fewer congregants per room while ensuring 6 feet in between congregants), more frequent services to allow strict compliance with **Social Distancing Requirements**.

- Storage for **Critical Businesses**
- Animal shelters, animal boarding services, animal rescues, zoological facilities, animal sanctuaries, and other related facilities
- Moving services
- In person group counseling or recovery meetings for substance abuse or behavioral health following social distancing of 6 feet and no more than 10 participants

6. News Media

- Newspapers
- Television
- Radio
- Other media services

7. Financial and Professional Institutions, Including:

- Banks and credit unions
- Insurance and payroll
- Services related to financial markets
- Professional services, such as legal, title companies, or accounting services, real estate appraisals and transactions

8. Providers of Basic Necessities to Economically Disadvantaged Populations, Including:

- Homeless shelters and congregate care facilities
- Food banks
- Human services providers whose function includes the direct care of patients in State-licensed or funded voluntary programs; the care, protection, custody and oversight of individuals both in the community and in State-licensed residential facilities; those operating community shelters and other critical human services agencies providing direct care or support

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9. Construction, Including but not Limited To:

- Housing and housing for low-income and vulnerable people
- Skilled trades such as electricians, plumbers
- Other related firms and professionals who provide services necessary to maintain the safety, sanitation, and critical operation of residences and other **Critical Businesses** or **Critical Government Functions**, and other essential services

10. Defense

- Defense, security, and intelligence-related operations supporting the State of Colorado, local government, the U.S. Government or a contractor for any of the foregoing
- Aerospace operations
- Military operations and personnel
- Defense suppliers

11. Critical Services Necessary to Maintain the Safety, Sanitation and Critical Operations of Residences or Other Critical Businesses, Including:

- Law enforcement
- Fire prevention and response
- Building code enforcement
- Security
- Emergency management and response
- Building cleaners or janitors
- General maintenance whether employed by the entity directly or a vendor (including maintenance and repair of ordinary household and business appliances but not in-person retail sales of such products)
- Automotive and bicycle repair
- Disinfection
- Snow removal
- Bail bonds agents
- Pest control

12. Vendors that Provide Critical Services or Products, Including Logistics and Technology Support, Child Care and Services:

- Logistics

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- Technology support for online and telephone services
- Child care programs and services
- Government owned or leased buildings
- **Critical Government Functions**

13. Educational Institutions that Provide Critical Services to Students and the General Public:

- P-12 public school and private schools for the purpose of providing meals, housing, facilitating or providing materials for distance learning, and providing other essential services to students, provided that **Social Distancing Requirements** are observed.
- Postsecondary institutions, including private and public colleges and universities, for the purpose of facilitating distance learning, providing in person classroom or laboratory education for less than 10 students per classroom or lab in medical training fields only, or performing essential functions, provided that **Social Distancing Requirements** are observed, such as security, medical and mental health services, housing, food services, and critical research.

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APPENDIX G: COUNTY VARIANCE REQUESTS

Governor Jared Polis issued **Executive Order D 2020 044 Safer at Home** effective April 27, 2020. The key elements of the Order are that most people still stay at home as much as possible and avoid unnecessary social interactions; vulnerable populations continue to stay at home except to support or perform necessary activities or participate in critical government functions or critical businesses; there is limited reopening of postsecondary institutions, and certain business operations are permitted; people are still encouraged to stay within their county of residence or employment as much as possible; public gatherings of more than ten (10) persons are prohibited; and Coloradans are advised to wear non-medical cloth face coverings that cover the nose and mouth whenever in public.

Any county that desires to apply for a variance from part or all of the executive order may do so after meeting the following criteria and submitting an alternative COVID-19 suppression plan to be approved or denied by Colorado Department of Public Health and the Environment (CDPHE), attention Executive Director, Jill Hunsaker Ryan, MPH. The application must be submitted directly to CDPHE through the online application process, found [here](#).

Criteria for variance consideration:

- 1) The local public health agency endorses the alternative plan;
- 2) Local hospitals can verify that they have the capacity to serve all people needing their care;
- 3) The county commissioners or, in the case of the City and County of Denver, the mayor of Denver, or, in the case of the City and County of Broomfield, the city council, vote affirmatively to adopt the alternative plan in place of the state Safer-At-Home order; and
- 4) Counties with sovereign tribal nations (Ute Mountain Ute and Southern Ute Indian tribes) must obtain a letter of support from tribes and include it with their variance application.

The local variance process allows communities that are not experiencing a high rate of transmission to tailor social distancing policies to local conditions, in order to promote community wellness and economic stability. To protect other communities and hospital systems statewide, it is paramount that the local variance process only be used when transmission is at a low enough level to be suppressed through testing and containment efforts to detect positive cases, ensure successful isolation and quarantine close contacts. Examples of local conditions that should be considered in seeking a variance include: a low number of new cases per day, cases declining for the past 14 days, incidence below the state average, declining positive tests as a percent of total tests for the past 14 days, low and stable case growth rate or equivalent, and having an early warning system to detect an increase in community spread or outbreaks, with

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triggers for tightening restrictions to prevent a breach of local hospital system capacity. Considerations and triggers should be documented in the plan submitted to CDPHE.

The Colorado Department of Public Health and Environment is available to provide technical assistance to any county considering a variance. The department will consider applications for variances based on the submitted plan's rationale for a step down and the presence of an early warning system with triggers for tightening back up. CDPHE reserves the right to approve or deny applications. All variances granted pursuant to this Order remain in effect until the Order expires without further extension or is terminated, unless automatically rescinded pursuant to the terms of the variance approval by CDPHE, rescinded for other reasons by CDPHE, or withdrawn by the county.

Counties that choose to not comply with this executive order or an approved variance will be subject to the loss of emergency preparedness funds.

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APPENDIX H: NON-CRITICAL MANUFACTURING

I. Effective May 4, 2020, **Non-Critical Manufacturing** may resume if the business can demonstrate compliance with the requirements of this Order, including Section II.I, and all of the following:

A. Employers must implement the following measures within the workplace to minimize disease transmission:

1. Create and implement policies or procedures for all of the following:
 - i. Limiting group interactions to keep any group less than ten (10) people by
 - a. staggering of shift changes, breaks, lunches, etc., and
 - b. eliminating all-staff in-person meetings or lunches;
 - ii. Modifying the flow of people traffic to minimize contacts, such as arranging one-way flow of work and people;
 - iii. Implementing 6 foot distancing and impermeable barriers between employees whenever possible;
 - iv. Limiting the sharing of tools, equipment, or other resources to the greatest extent possible, and if not feasible, implement cleaning and disinfection protocols as often as possible for any such shared tool, equipment and resources; and
 - v. Requiring hand washing upon arrival and before departure, establishing set hand washing time frames throughout shifts, and providing additional hand washing stations if possible.
2. Conduct cleaning protocols as follows:
 - i. Daily deep cleaning and disinfecting and full cleaning in-between shifts in accordance with [CDPHE guidance](#); and
 - ii. Establish protocols to increase the frequency of sanitization in work and common spaces, following OSHA requirements and CDPHE guidance, [found here](#);
3. Provide contactless options, such as entry to the worksite, payments, etc., whenever applicable and possible;
4. Use paperless, electronic options whenever possible to reduce the use of sharing paperwork;
5. Ensure ventilation of work and break areas is in line with [OSHA guidance](#);
6. Support transportation arrangements that discourage carpooling; and
7. Develop a Preparedness and Response document in accordance with OSHA guidance.

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B. Employers must implement the following measures for employees to minimize disease transmission:

1. Provide guidance about how to comply with 6 foot distancing;
2. Designate workers to monitor and facilitate distancing on processing floor lines;
3. Require employees to use masks or face coverings, except where doing so would inhibit that individual's health;
4. Require employees to wash their hands upon arrival to and before departure from the facility, as well as frequently during workshifts, in accordance with the policy required in Section I.A.1.vi of this **Appendix**;
5. Disinfect work stations between shifts and/or at the end of the workday;
6. Group employees into teams or shifts that remain together;
7. Stagger employee lunch and break times;
8. Encourage all employees not critical to in-person operations to continue working from home or working remotely; and
9. Encourage the wearing of masks or other face coverings while carpooling or taking other forms of public transportation.

C. Employers must implement the following measures regarding customers to minimize disease transmission:

1. Prohibit entry to the worksite of all non-essential external visitors;
2. Conduct symptom checks for any essential visitors who will interact with employees;
3. Require essential visitors to wear masks or face coverings; and
4. Encourage 6 foot distancing and implement procedures to limit person-to-person interaction in inbound/outbound shipping areas.

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APPENDIX I: RESTAURANTS

I. Effective May 27, 2020, while **Restaurants** remain encouraged to continue curbside pick up and delivery, including alcohol pick up and delivery, **Restaurants** may resume in-person dining if the business can demonstrate compliance with the requirements of this Order, including Section II.I, and all of the following:

A. Employers must implement the following measures within the workplace to minimize disease transmission:

1. Indoor and outdoor in-person services
 - a. Post signage notifying patrons and employees of hygiene and sanitation expectations, including not entering if they are experiencing any symptoms.
 - b. Patrons in different parties must be a minimum of 6 feet apart. The spacing of tables should be a minimum of 6 feet to ensure proper distancing.
 - c. Limit party size to 8 people or less.
 - d. All employees must wear facial coverings that cover the nose and mouth.
 - e. Employees may utilize disposable gloves as normally required by their governing regulations. Employees that are directly involved with disinfecting equipment and surfaces within critical business and/or have direct contact with customers shall wear gloves when involved in these activities.
 - f. Cleaning and disinfection of all shared surfaces must be done between seatings.
2. Additional indoor dine-in service requirements include:
 - a. Limit service to no more than 50% indoor posted occupancy code limit, with no more than 50 people total, whichever is less.
 - b. Ensure proper ventilation per [OSHA guidance](#)
3. Restaurants must make every effort to maintain physical distancing at all times, both inside and outside the establishment, including:
 - a. Using a reservation system, exclusively if possible;
 - b. Disallowing close proximity to others outside the patron's group through eliminating communal or seat yourself options
 - i. Bar seating options should only be available if the bar is not being used for bar service;
 - c. Eliminating self-service stations or buffets; and
 - d. Provide appropriate signs or markings within the **Restaurant** to space lines, indicate which tables are unavailable, prohibit games and dance floors that encourage gatherings, and direct foot traffic.

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4. Restaurants must implement measures to maintain the cleanliness and sanitation of the restaurant, including:
 - a. Minimize or eliminate high touch surfaces and multi-use objects, such as games, table cloths if used for multiple seatings, permanent menus, and condiments, and clean and disinfect any shared objects between uses;
 - b. Increase cleaning and disinfection protocols and track with publicly posted cleaning logs including:
 - i. Clean and disinfect restrooms every hour, and
 - ii. Block off stalls and urinals with proper signage to adhere to 6 feet distance between patrons; and
 - c. Use disposable items wherever possible, such as single-use menus and condiments.

B. Employers must implement the following measures for employees to minimize disease transmission:

1. Establish a minimum of 6 foot physical distancing standards and train employees on maintaining distancing between employees to the greatest extent possible
 - a. Consider implementing workflow requirements, dividers at pay counters and hostess areas, and modifying the menu to free up kitchen space.
 - b. Limit group interactions including staggering of shift changes, breaks, no consumption of family or shift meals onsite, etc.
 - c. Conduct virtual staff meetings whenever possible, any all staff meetings must meet 6 foot distancing requirements.
2. Face coverings and gloves
 - a. Require employees to wear facial coverings at all times, and encourage the use of gloves when in contact with customers or goods.
 - b. Require facial coverings and encourage gloves for vendors, suppliers, and contract workers entering the licensed establishment.
3. Employee sanitary requirements
 - a. Encourage frequent breaks to wash hands (at least every 30 minutes) including upon arrival and departure.
 - b. Strict adherence to the hygienic practices listed in the *Colorado Retail Food Regulations* regarding hand washing and glove use.

C. Employers should implement as many of the following measures as feasible regarding customers to minimize disease transmission and assist in any necessary outbreak investigations:

1. To facilitate notifying customers if a disease exposure occurs, consider
 - a. providing an option for customers to “sign in”, and
 - b. utilizing a reservation system;
2. Implement as feasible the following low or no touch options:

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- a. Provide contactless payment options, and
 - b. Continue curbside pick up/delivery options and recommend for vulnerable individuals or those unable to adhere to hygienic and distancing requirements;
3. Ensure 6 foot distancing at all times by implementing the following:
 - a. Block of lobbies or waiting areas completely, or establish customer waiting areas that maintain proper social distancing from other guests, and
 - b. Restrict standing or congregating in public spaces such as the bar area, entrance or exit; and
4. Request facial coverings be worn by customers when not seated for dining, and consider refusing service to customers who refuse to adhere to hygiene and social distancing requirements.

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APPENDIX J: CHILDREN'S DAY CAMPS AND YOUTH SPORTS DAY CAMPS

I. Effective June 1, 2020, summer camps and sports camps may open for business if the camp operator can demonstrate compliance with the requirements in this Appendix.

A. Prior to hosting a camp, the camp operators must create a plan that implements all of the following:

1. All activities, including recreation, transportation, and food service must comply with the following restrictions:
 - a. Groups of campers are limited to 25 or fewer outdoors, and 10 or fewer indoors per room, and shall not mix with other groups.
 - b. Six feet physical distancing is required at all times, which may limit further the size of the group due to the size of the space.
 - c. Require face coverings during transportation in camp vehicles to and from the camp.
2. For staff and camper health and safety:
 - a. Provide adequate personal protective equipment (PPE) for staff who supervise and care for ill campers, staff, and volunteers.
 - b. Determine the staffing needs, including the availability of substitute staff if staff or volunteers become ill or are exposed.
 - c. Ensure space is available to isolate ill staff and campers (cots, bedding, restrooms, and supervision).
 - d. Ensure the on-call availability of a nurse or health care professional.
 - e. Establish protocols for responding and reporting cases to health care staff, local public health authorities, and CDPHE.
 - f. Prepare procedures for closures following a case or outbreak of COVID-19.
 - g. Provide access to or sufficient supplies of all of the following:
 - i. public restrooms, drinkable water sources, and picnic or other eating areas during activities at outdoor locations;
 - ii. handwashing/hand sanitizing locations; and
 - iii. adequate cleaning and disinfecting supplies
 - h. Train camp staff and volunteers on the requirements of this Order, as well as prevention, transmission, and care of COVID-19 illness.
3. Single-night overnight excursions are permitted so long as the campers and staff remain strictly cohorted.

B. Camp operators must meet all of the following requirements while camps are in session:

1. Staff, volunteer and camper health.

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- a. Screen staff, volunteers and campers for symptoms and close-contact exposures upon arrival. Exclude ill individuals from the camp, and encourage them to use the [CDPHE Symptom Tracker](#)
 - b. Staff or volunteers sent home must adhere to [isolation](#) and exclusion requirements.
 - c. Establish protocols for staff, volunteers and campers to alert health care staff of symptoms in themselves or campers.
 - d. Determine if any staff or volunteers are at a higher risk for COVID-19 and consider whether job duties that don't involve interaction with others are advisable.
2. Require staff, volunteers and campers to do all of the following:
 - a. Remain with the same group of campers and maintain physical distancing of at least 6 feet whenever possible, including during meals and recreation;
 - b. Wash hands upon arrival, before eating, and at regular intervals throughout the day;
 - c. Stagger activities as much as possible to avoid any mixing of groups, and
 - d. Wear masks or face coverings whenever possible.
3. Post signs or mark spaces to ensure 6 foot minimum distancing, and limit any activities that are not conducive to maintaining this distance.
4. Educate campers as needed on COVID-19 prevention, including respiratory etiquette and good hygiene, in accordance with public health guidance.
5. Ensure sufficient cleaning and disinfecting of commonly touched surfaces, equipment, and vehicles throughout the camp.
6. Provide frequent communication with all families of enrolled campers related to the occurrences of COVID-19 at the camp, the camp's responses, and all issues in the public health order.

JARED POLIS
GOVERNOR



136 STATE CAPITOL
DENVER, COLORADO 80203

TEL 303-866-2471
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D 2020 091

EXECUTIVE ORDER

Safer at Home and in the Vast, Great Outdoors

Pursuant to the authority vested in the Governor of the State of Colorado and, in particular, pursuant to Article IV, Section 2 of the Colorado Constitution and the relevant portions of the Colorado Disaster Emergency Act, C.R.S. § 24-33.5-701, *et seq.*, I, Jared Polis, Governor of the State of Colorado, hereby issue this Executive Order due to the presence of coronavirus disease 2019 (COVID-19) in Colorado.

I. Background and Purpose

On March 5, 2020, the Colorado Department of Public Health and Environment's (CDPHE) public health laboratory confirmed the first presumptive positive COVID-19 test result in Colorado. Since then, the number of confirmed cases has continued to climb, and there is community spread throughout the State. I verbally declared a disaster emergency on March 10, 2020, and on March 11, 2020, I issued the corresponding Executive Order D 2020 003, as amended by Executive Orders D 2020 018, D 2020 032, D 2020 058, and D 2020 076. On March 25, 2020, I requested that the President of the United States declare a Major Disaster for the State of Colorado, pursuant to the Stafford Act. The President approved that request on March 28, 2020.

My administration, along with other State, local, and federal authorities, has taken a wide array of actions to mitigate the effects of the pandemic, prevent further spread, and protect against overwhelming our health care resources.

The virus that causes COVID-19 is spread primarily by close contact between people and through respiratory droplets when an infected person coughs or sneezes. It can also be spread through contact with contaminated surfaces. Public health experts recommend we practice Social Distancing, or maintaining a physical distance of six (6) feet or more from other people, as a way to slow the spread of COVID-19. This is especially important for Vulnerable Individuals as ninety percent (90%) of Colorado fatalities are individuals older than sixty (60). Evidence shows that Social Distancing and the Stay at Home Executive Order D 2020 017, as amended, have helped to slow the rate of infection and ensured that Coloradans who needed it had access to healthcare resources.

While we have seen indications that our efforts to "flatten the curve" are working, increased transmission of the virus, and the resulting strains on our healthcare resources, continue to threaten Coloradans' way of life and livelihoods. As we take steps to return Coloradans to work, we must continue to practice Social Distancing from others at a high level

and implement other measures, such as limiting our social interactions, extra precautions for Vulnerable Individuals, and wearing non-medical masks while in public to facilitate reopening the economy while we protect public health. As we move forward, the State continues to monitor the spread of COVID-19, increase our testing and tracing capabilities, and consider additional precautions as we learn more about the novel coronavirus and its effects on human health.

Colorado has millions of acres of accessible federal land, municipal parks, State parks, State and county open space, and other accessible areas that allow for stronger Social Distancing in our great outdoor areas. Coloradans should Stay at Home or in the great outdoors away from others as much as possible and continue to limit social interactions, remain at least six (6) feet from others not in their household, and wear non-medical facial coverings in public.

This Executive Order implements a number of measures that will allow many Coloradans to return to work and recreation in the great outdoors while we maintain a sustainable level of Social Distancing. Any business or activity not addressed in this Executive Order or any accompanying Public Health Order (PHO) may operate in accordance with general guidance from CDPHE concerning group limitations, Social Distancing Requirements, and sanitation and cleaning protocols.

II. Directives

- A. All Vulnerable Individuals should Stay at Home or in the vast, great outdoors away from others as much as possible, and continue to limit their social interactions, remain at least six (6) feet from others not in their household, and wear facial coverings in public. Vulnerable Individuals cannot be compelled to perform in-person work for any business or government function, including a Critical Business or Critical Government Function.
- B. For purposes of this Executive Order, Vulnerable Individuals means:
 - 1. Individuals who are sixty-five (65) years and older;
 - 2. Individuals with chronic lung disease or moderate to severe asthma;
 - 3. Individuals who have serious heart conditions;
 - 4. Individuals who are immunocompromised;
 - 5. Pregnant women; and
 - 6. Individuals determined to be high risk by a licensed healthcare provider.
- C. I direct the Executive Director of the Colorado Department of Higher Education (CDHE) to continue to work with CDPHE to identify those programs and courses at postsecondary institutions that cannot be taught remotely and require limited in-person instruction.

-
- D. I direct the Colorado Civil Rights Division within the Department of Regulatory Agencies and CDPHE to provide continued guidance to prevent discrimination in the workplace related to COVID-19. Employers must provide reasonable accommodation and are prohibited from discriminating against employees who are showing symptoms of COVID-19 or who have been in contact with a known positive case of COVID-19.
- E. I direct the Executive Director of CDPHE to issue a new or amended PHO consistent with the directives in this Executive Order. The new or amended PHO must:
1. Advise Coloradans to:
 - i. Limit social interactions to the greatest extent possible;
 - ii. If travelling outside their community, Coloradans are urged to honor all restrictions in place at their destination and avoid travel to counties or municipalities that issue travel restrictions;
 - iii. Get tested for COVID-19 if they are experiencing flu-like symptoms or if they are sick, Stay at Home until at least three (3) days after the fever and last symptom subsides, except as necessary to care for themselves or seek medical care. Coloradans who are sick and receive negative COVID-19 test results may resume activities as soon as they feel ready; and
 - iv. Take other common-sense precautions against spreading and contracting COVID-19 such as maintaining six (6) feet of Social Distancing from others not in their household, wearing non-medical face coverings that cover the nose and mouth while in public, and frequent hand washing.
 2. Prohibit public gatherings of groups of ten (10) persons in both public and private commercial spaces unless gatherings of groups greater than ten (10) persons are expressly authorized by this Executive Order or an associated PHO.
 3. Strongly encourage all businesses and governmental entities to allow workers to telecommute whenever possible.
 4. Require all Critical Businesses, Critical Government Functions, Non-Critical Retail, and Non-Critical Commercial Businesses to make work accommodations for Vulnerable Individuals. Employers are also encouraged to make accommodations for individuals living in the same household as a Vulnerable Individual and for individuals with childcare responsibilities.
 5. Permit Non-Critical Retail to operate and offer goods through delivery service, window service, walk-up service, drive-through service, drive-up service, curbside delivery, and permit Non-Critical Retail to allow customers onto their

premises in a manner allowing for strict compliance with mandatory Social Distancing Requirements similar to the requirements for Critical Retail and cleaning and disinfection protocols. If a Non-Critical Retail entity experiences a COVID-19 case, they should fully cooperate with requirements of local public health officials.

6. Permit Places of Public Accommodation to offer food and beverage using delivery service, window service, walk-up service, drive-through service, drive-up service, curbside delivery, outside dining, limited indoor dining, or any other manner set forth in an existing Executive Order or PHO and in accordance with mandatory Social Distancing Requirements and cleaning and disinfection protocols. If a Place of Public Accommodation experiences a COVID-19 case, they should fully cooperate with requirements of local public health officials.
 7. Ensure that Critical Businesses, Critical Government Functions, Non-Critical Commercial Businesses, and Non-Critical Retail with over fifty (50) employees in any one location follow protocols established by PHO, including but not limited to symptom screening and temperature check, closure of common areas, cleaning protocols, and mandatory Social Distancing Requirements.
 8. CDPHE must specifically identify any businesses, industries, sectors, activities, or events that must remain closed at this time.
 9. Any business or activity not addressed in this Executive Order or any accompanying PHO may operate in accordance with general guidance from CDPHE concerning group limitations, Social Distancing Requirements, and sanitation and cleaning protocols.
- F. Any new or amended PHO issued pursuant to this Executive Order must identify or develop:
1. Mandatory Social Distancing Requirements to be implemented by all employers, identifying any specific protocols for certain employers based on the nature of their work, including proper face and, if appropriate, hand coverings to be used;
 2. A definition of Vulnerable Individual consistent with this Executive Order;
 3. Operations requirements for Non-Critical Retail and Critical Retail;
 4. Appropriate guidelines for classes and programs identified in consultation with the Executive Director of CDHE pursuant to paragraph II.C.;
 5. Guidance governing restaurants, personal services, childcare, houses of worship, life cycle events, short-term rentals, summer camps, team sports, State parks, and personal and outdoor recreation activities. CDPHE may authorize public

gatherings of groups in these settings that exceed the limits in paragraph II.E.2., above, if justified by public health conditions; and

6. Define mandatory Social Distancing Requirements and sanitation and cleaning protocols for all businesses and government functions.
- G. I direct the Executive Director of the Colorado Department of Labor and Employment (CDLE) to continue to modify temporary emergency rules to amend the Colorado Health Emergency Leave with Pay Rules found in 7 CCR 1103-10 to cover individuals returning to work under this Executive Order and to extend paid sick leave coverage to up to two-thirds pay for fourteen (14) days if a worker has tested positive for COVID-19, has COVID-like symptoms, or has been directed to quarantine or isolation due to COVID-19 concerns.
- H. I direct the Executive Director of CDLE to continue to modify temporary emergency rules pursuant to C.R.S. § 8-73-108(4)(c) and guidance to ensure that workers, and particularly workers who are Vulnerable Individuals, are not in danger of losing unemployment insurance eligibility for refusal to return to COVID-19-related demonstrable, unsafe working conditions.
- I. Terms in this Executive Order, including Stay at Home, Necessary Activities, Minimum Basic Operations, Critical Government Functions, Necessary Travel, Critical Businesses, Places of Public Accommodation, Critical Retail, Social Distancing Requirements, and Vulnerable Individuals have the meaning as defined in PHO 20-28, as amended, or any PHO issued pursuant to this Executive Order.
- J. Any county wishing to apply for a local variance from part or all of this Executive Order must submit a written application to CDPHE. CDPHE shall define any criteria required for approval of a local variance.
- K. CDPHE shall review and approve a county-specific COVID-19 suppression plan that meets CDPHE's public health standards. CDPHE shall not provide COVID-19 preparedness grant funding to any county that implements measures that are less restrictive than the standards contained in this Executive Order if the county did not first obtain approval from CDPHE to adopt such less restrictive standards.
- L. Nothing in this Executive Order prevents a county or municipality from adopting more protective standards than those contained in this Executive Order as necessary.
- M. Except as modified by this Executive Order, all Executive Orders issued due to COVID-19 that are currently in effect shall remain in full force and effect as originally promulgated.

Executive Order D 2020 091

June 1, 2020

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III. Duration

This Executive Order shall expire thirty (30) days from June 1, 2020, unless extended further by Executive Order.



GIVEN under my hand and
the Executive Seal of the
State of Colorado, this first
day of June, 2020.

A handwritten signature in blue ink, reading "Jared Polis".

Jared Polis
Governor



COLORADO
Department of Public
Health & Environment

FIFTH AMENDED PUBLIC HEALTH ORDER 20-28 SAFER AT HOME AND IN THE VAST, GREAT OUTDOORS

June 2, 2020

PURPOSE OF THE ORDER

I issue this Amended Public Health Order (PHO or Order) pursuant to the Governor's directive in **Executive Order D 2020 091** in response to the existence of thousands of confirmed and presumptive cases of Coronavirus disease 2019 (COVID-19) and related deaths across the State of Colorado. Further, as there is substantial evidence of community spread of COVID-19 throughout the State, it is crucial to take measures now that can mitigate further spread of disease in our communities.

FINDINGS

1. Governor Polis issued **Executive Order D 2020 003** on March 11, 2020, declaring a disaster emergency in Colorado due to the presence of COVID-19. Since that time, the Governor has taken numerous steps to implement measures to mitigate the spread of disease within Colorado, and has further required that several public health orders be issued to implement his orders.
2. I have issued public health orders pertaining to the limitation of visitors and nonessential individuals in skilled nursing facilities, intermediate care facilities, and assisted living residences; closing bars and restaurants to in-person services; defining the terms of the Governor's stay at home requirements and critical business designations; requiring hospitals to report information relevant to the COVID-19 response; and requiring the wearing of face coverings in the workplace and urging their use in public. These measures all act in concert to reduce the exposure of individuals to disease, and are necessary steps to protect the health and welfare of the public. Additionally, in reducing the spread of disease, these requirements help to preserve the medical resources needed for those in our communities who fall ill and require medical treatment, thus protecting both the ill patients and the healthcare workers who courageously continue to treat patients.
3. As of June 1, 2020, there are 26,577 known cases of COVID-19 in Colorado, 4,372 Coloradans have been hospitalized and 1185 Coloradans have died from COVID-19. Multiple sources of data show that COVID-19 transmission and the use of healthcare due to COVID-19

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June 2, 2020

have leveled off in Colorado. Our work to “flatten the curve” appears to be succeeding, and the Governor has ordered some lessening of the current Safer at Home restrictions as a result.

4. **Executive Order D 2020 091 Safer at Home and in the Vast, Great Outdoors** still requires that people at risk of severe illness from COVID-19, also known as **Vulnerable Individuals**, remain at home or in the great outdoors as much as possible, but allows limited reopening of postsecondary institutions and certain businesses. Additionally, individuals are encouraged to stay at home as much as possible and practice **Social Distancing** to reduce the likelihood of disease transmission, but certain activities, such as gathering in groups of no more than ten for activities, are permitted. As we continue to combat COVID-19 in our communities, continuing restrictions on individual travel and necessary activities remain appropriate.

INTENT

This Order sets forth the requirements for implementation of **Safer at Home and in the Vast, Great Outdoors**, as directed by Governor Polis. Individual restrictions remain in place concerning limitations on activities, travel, and public gatherings. Workplace restrictions remain necessary to implement standard **Social Distancing Requirements**, cleaning standards, and other items necessary to reduce the possibility of disease spread. Additionally, certain businesses and activities require specific guidance based on their business practices, and those are included in the appendices to this Order.

ORDER

Unless otherwise specifically noted in this Order, the requirements of this Order are effective June 1, 2020 and expire 30 days from June 1, 2020. This Order supersedes and replaces Public Health Orders 20-22 and 20-24, as amended.

I. **Safer at Home and in the Vast, Great Outdoors**

A. All individuals currently living within the State of Colorado are encouraged to stay at home or in the vast, great outdoors and avoid unnecessary interactions whenever possible in order to reduce the spread of disease. Individuals living in shared or outdoor spaces must at all times, to the greatest extent possible, comply with **Social Distancing Requirements**, defined in Section III below, and are encouraged to leave their residences only to perform or utilize **Necessary Activities**, defined in Section III below.

B. Individuals are urged to wear non-medical cloth face coverings that cover the nose and mouth whenever in public as required by **Executive Order D 2020 091**.

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C. All public and private gatherings in commercial spaces are limited to no more than ten (10) individuals, except for the purposes expressly permitted in this PHO, which include **Necessary Activities**. Nothing in this Order prohibits the gathering of members living in the same residence.

D. People at risk of severe illness from COVID-19 are urged to stay in their residence at all times except as necessary to seek medical care. People at risk of severe illness from COVID-19 cannot be compelled to work for any business or government function, including a Critical Business or Critical Government Function, during the pendency of this pandemic emergency. People who are sick must stay in their residence at all times except as necessary to seek medical care, and must not go to work, even for a **Critical Business**, defined in Section III below.

E. Individuals who are sick or are experiencing flu-like symptoms should get tested for COVID-19, and must self-isolate until their symptoms cease or until they have a negative test result. If an individual has tested positive for COVID-19 and/or has developed symptoms of COVID-19, including early or mild symptoms (such as cough and shortness of breath), they should be in isolation (staying away from others) until they have had no fever for at least seventy-two (72) hours (that is three full days of no fever without the use of medicine that reduces fevers), other symptoms have improved (such as cough or shortness of breath) and at least ten (10) days have passed since symptoms first appeared. Coloradans who are sick and receive negative COVID-19 test results should continue to stay home while they are sick and should consult with their healthcare provider about the need for additional testing and the appropriate time to resume normal activities.

F. Governmental and other entities are strongly urged to make shelter available to people experiencing homelessness as soon as possible and to the maximum extent practicable, and are authorized to take all reasonable steps necessary to provide non-congregate sheltering along with necessary support services to members of the public in their jurisdiction as necessary to protect all members of the community. People experiencing homelessness are urged to protect their health and safety by complying with **Social Distancing Requirements** at all times.

G. Individuals are encouraged to limit travel to **Necessary Travel**, defined in Section III below, including but not limited to, travel by automobile or public transit. People must use public transit only for purposes of performing **Necessary Activities** or to travel to and from work to operate **Businesses** or maintain **Critical Governmental Functions** as authorized in Section II of this Order. People riding on public transit must comply with **Social Distancing Requirements** to the greatest extent feasible.

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H. Activities that are done with 10 or fewer individuals, following **Social Distancing Requirements** for non-household members are authorized. Individuals may participate in local and personal recreation in outside public spaces, as an authorized **Necessary Activity**, in groups no larger than 10 and practicing social distancing maintaining 6 feet between participants. Travel should occur within an individual's local community or as necessary to access outdoor recreation areas. If travelling outside their community, Coloradans are urged to honor all restrictions in place at their destination and avoid travel to counties or municipalities that issue travel restrictions. Local authorities have the discretion to close recreation as needed.

1. Private campgrounds may open for use. Campground operators must regularly clean and disinfect all common areas, such as bathrooms, in accordance with the [CDPHE Cleaning Guidance](#). Group facilities, pavilions, cabins, and yurts remain closed. Campsites must be a minimum of 6 feet apart, and should only be available by reservation. Campground operators must post signs to remind guests of physical distancing requirements, and limit visitors in campground offices to maintain such distancing.

2. Effective June 4, 2020, the following personal recreation activities are permitted:

- a. Playgrounds and outdoor sports facilities, such as tennis and pickleball courts, may be open for use for no more than 10 people at a time. High touch areas should be cleaned and disinfected frequently.
- b. Outdoor swimming pools may open at 50% capacity, limited to no more than 50 people, with the bathrooms and showers open but the lockers remain closed. Frequently touched surfaces, shared objects, and bathrooms should be cleaned and disinfected every hour.
- c. Organized recreational youth or adult league sports may resume activities with no more than 25 players outdoors or 10 players indoors. Parents may attend youth sports activities but must remain 6 feet apart from non-household members. Spectators are strongly discouraged for adult sports. The sports league must retain records of who played in case later disease outbreak investigations become necessary.
- d. Gyms, recreation centers and indoor pools may open, with no more than 10 people per room, maintaining 6 feet distancing. Sharing of equipment is discouraged, and equipment must be

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cleaned and disinfected between uses. Restrooms and showers are open, while lockers remain closed.

3. Effective June 4, 2020, the following outdoor recreation activities are permitted if authorized within the local jurisdiction and conducted in accordance with the jurisdiction's policies, the requirements below, and the requirements in **Appendix K** of this Order:

- a. Non-guided recreation in groups no larger than 10;
- b. Non-guided equipment rentals, subject to compliance with the retail requirements in **Appendix A** of this Order;
- c. Guide services for fishing, hunting, biking, horseback riding, canoeing, kayaking, stand up paddle boarding, ATV tours, and climbing are permitted in groups no larger than 10;
- d. River outfitters, rafting, or Jeep Tours in groups of up to 2 households in a boat or jeep only in groups of no more than 10;
- e. Developed hot springs may operate in accordance with the outdoor pools requirements in Section I.H.2.b of this Order;
- f. Outdoor recreation activities at ski resorts (mountain biking, hiking, climbing walls, mountain coasters, ropes courses, adventure parks, zip lines, etc) if the local public health agency has reviewed and approved the resort's plans;
- g. Zip lines, ropes courses, outdoor artificial climbing walls, or outdoor sports adventure centers not affiliated with ski resorts if the local public health agency has reviewed and approved the resort's plans;
- h. Scenic trains if every local public health agency in each jurisdiction through which the train operates has approved the train's plans; and
- i. Trail and conservation crews no larger than 10.

J. Due to ongoing concerns regarding disease transmission in larger groups settings that could result in disease outbreaks, the following activities are not authorized to occur:

1. Gatherings or events, including organized races, of more than 10 people that are not otherwise authorized in this Order;
2. Adult and youth sports tournaments that attract crowds or travelers;
3. Rodeos, fairs, festivals, and parades;
4. Receptions for more than 10 people; and
5. Car, motorcycle or horse races unless there are no spectators and race personnel maintain 6 feet distancing as much as possible; and

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6. Sporting events except for recreational sports leagues as authorized in Section I.H.2.c of this Order.

II. Business Requirements

Any business or activity not addressed in **Executive Order D 2020 091**, this Order or corresponding interpretive guidance found [here](#) may operate with 10 or fewer individuals in accordance with the requirements in Section II.I of this Order.

A. The following places of public accommodation remain closed to ingress, egress, use, and occupancy by members of the public:

1. Bars, taverns, brew pubs, breweries, microbreweries, distillery pubs, wineries, tasting rooms, special licensees, clubs, and other places of public accommodation offering alcoholic beverages for on-premises consumption unless the establishment ensures access to food from a licensed retail food establishment for on-premise consumption;
2. Cigar bars;
3. Movie and performance theaters except for drive in movie theaters, opera houses, concert halls, and music halls; and
4. Casinos, amusement parks and arcades.

These restrictions do not apply to any of the following:

1. Room service in hotels;
2. Health care facilities, residential care facilities, congregate care facilities, and juvenile justice facilities;
3. Crisis shelters or similar institutions;
4. Airport concessionaires;
5. Institutions of higher education offering dining hall services located in or adjacent to campus dormitories that are accessed through student, staff, faculty, or campus associated identification, as well as grab and go food services within these institutions, while exercising social distancing measures of at least six feet between individuals; and
6. Any emergency facilities necessary for the response to these events.

B. All **Critical Businesses** and **Critical Government Functions**, as defined in Section III below, may continue to operate. **Critical Businesses** must comply with **Social Distancing Requirements** at all times, adopt work from home or tele-work policies for any operations that can be done remotely, and implement other strategies, such as staggered schedules or re-designing workplaces, to create more distance between workers unless doing so would make it impossible to carry out critical functions. **Critical Businesses** that serve the public such as grocery stores and other **Critical Retail** shall comply with **Social Distancing Requirements** at all times including, but not limited to, when any customers are standing in line.

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Critical Business and Critical Government Functions shall continue to promote telecommuting to the greatest extent possible.

C. All places of public accommodation subject to Public Health Order 20-22, as amended, that offer food and beverages may continue to offer food and beverage using delivery service, window service, walk-up service, drive-through service, drive-up service, curbside delivery or any manner set forth in that PHO and in accordance with mandatory **Social Distancing Requirements**, except as prohibited or limited by **Executive Orders D 2020 091** or this Order. These entities include restaurants, food courts, cafes, coffeehouses, and other similar places of public accommodation offering food or beverage for on-premises consumption as or from a licensed retail food establishment, referred to in this Order as Restaurants; and bars, taverns, brew pubs, breweries, microbreweries, distillery pubs, wineries, tasting rooms, special licensees, clubs, and other places of public accommodation serving alcoholic beverages and, if serving food, only snacks and not kitchen-prepared meals, referred to in this Order as Bars.

1. Effective May 27, 2020, Restaurants may open to in-person dining at 50% of the indoor posted occupancy code limit, not to exceed 50 people, whichever is less. Tables or groups must be limited to no more than 8 people and be spaced so that patrons are a minimum of 6 feet apart. Restaurants may also use any existing, licensed outdoor space for in-person dining with the same group limit of 8 and minimum spacing of 6 feet apart. Restaurants must have or obtain approval from their local government's permitting, building and fire code oversight agency for any new outdoor dining space prior to use. Additional requirements for Restaurants are contained in **Appendix I**.

D. All **Non-Critical Retail**, as defined in Section III below, may operate and offer goods through delivery service, window service, walk-up service, drive-through service, drive-up service, curbside delivery, or any other manner allowing for strict compliance with mandatory social distancing requirements, similar to the requirements for **Critical Retail**. Additional requirements for **Critical** and **Non-Critical Retail** are contained in **Appendix A** of this Order.

E. All **Field Services**, including real estate, may resume operations, in accordance with the requirements of this Order including **Appendix B**. Real estate includes in-person real estate showings and marketing services which must adhere to **Social Distancing Requirements** with cleaning and disinfection between each showing, but may not hold open houses.

F. Other health care services not covered by **Executive Order 20 045 Voluntary or Elective Surgeries Or Procedures** and extended by **Executive Order D 2020 080**, in certain limited healthcare settings may resume if done in accordance with the requirements of **Appendix E**.

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G. Effective May 1, 2020, **Non-Critical Retail** and limited **Personal Services** may resume in-person services if they meet the requirements in Section II.I below and the additional requirements outlined for these services in **Appendices A** and **D** of this Order.

H. Effective May 4, 2020, the following businesses may reopen in accordance with the requirements of this Order:

1. Non-Critical Office-Based Businesses operating in an office and not a production environment, as defined in Section III below, may allow up to fifty (50) percent of their employees to conduct in-person work that takes place outside a private residence in accordance with the requirements in Section II.I below and the additional requirements outlined in **Appendix C**.

2. Non-Critical Manufacturing operating in a production environment with no more than ten (10) employees that comply with the requirements in Section II.I below and the additional requirements in **Appendix H**.

I. All Business and Government Functions. Critical Businesses, Critical Government Functions, Non-Critical Office-Based Businesses, Personal Services, Limited Healthcare Settings, and Non-Critical Retail shall all follow the protocols below:

1. Employers and sole proprietors shall take all of the following measures within the workplace to minimize disease transmission, in accord with the [CDPHE Guidance](#):

- a. deputize a workplace coordinator(s) charged with addressing COVID-19 issues;
- b. maintain 6 foot separation between employees and discourage shared spaces;
- c. [clean and disinfect](#) all high touch areas;
- d. post signage for employees and customers on good hygiene;
- e. ensure proper ventilation;
- f. avoid gatherings (meetings, waiting rooms, etc) of more than 10 people or provide sufficient spaces where appropriate distancing can be maintained if larger gatherings are required by law, such as for some government functions like trials;
- g. implement symptom monitoring protocols, conduct daily temperature checks and monitor symptoms in employees at the worksite to the greatest extent possible, or if not practicable, through employee self-assessment at home prior to coming to the worksite. A sample form can be found [here](#). If an employee reports any symptoms, refer symptomatic employees to the [CDPHE Symptom Tracker](#) and take all of the following steps:

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1. send employee home immediately;
 2. increase cleaning in your facility and require social distancing of staff at least 6 feet apart from one another;
 3. exclude employee until they are fever-free, without medication, for 72 hours and 10 days have passed since their first symptom; and
 4. if two or more employees have these symptoms, consult [CDPHE's outbreak guidance](#), contact your local health department and cooperate in any disease outbreak investigations; and
 - h. eliminate or regularly [clean and disinfect](#) any items in common spaces, such as break rooms, that are shared between individuals, such as condiments, coffee makers, vending machines.
2. Employers shall take all of the following measures regarding employees to minimize disease transmission:
- a. require employees to stay home when showing any symptoms or signs of sickness, and connect employees to company or state benefits providers;
 - b. provide work accommodations for people who are at risk of severe illness from COVID-19 who remain subject to **Stay at Home** advisement, prioritizing telecommuting, as people who are at risk for severe illness from COVID-19 shall not be compelled to go to work during the pendency of this pandemic emergency;
 - c. provide to the greatest extent possible flexible or remote scheduling for employees who may have child or elder care obligations, or who live with a person who still needs to observe **Stay at Home** due to underlying condition, age, or other factor;
 - d. encourage and enable remote work whenever possible;
 - e. encourage breaks to wash hands or use hand sanitizer;
 - f. phase shift and breaks to reduce density; and
 - g. provide appropriate protective gear like [gloves, masks, and face coverings](#) as defined by [OSHA industry standards](#).
3. Employers and sole proprietors shall implement the following measures regarding customers to minimize disease transmission:
- a. create whenever possible special hours for people who are at risk of severe illness from COVID-19 only;
 - b. encourage 6 foot distancing inside of the business for all patrons;
 - c. encourage customer use of protection like gloves and face

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coverings;

d. provide hand sanitizer at the entrances to the greatest extent possible; and

e. use contactless payment solutions, no touch trash cans, etc. whenever possible.

4. Employers with over fifty (50) employees in any one location shall, in addition to the above requirements, implement the following protocols:

a. implement employee screening systems that follow the requirements of Section II.I.1.g above in one of the following ways:

i. Set up stations at the worksite for symptom screening and temperature checks; or

ii. Create a business policy that requires at-home employee self-screening each work day and reporting of the results to the employer prior to entering the worksite;

b. close common areas to disallow gatherings of employees;

c. implement mandatory cleaning and disinfection protocols; and

d. require mandatory adherence to **Social Distancing Requirements**.

J. Work Accommodations. Employers must provide reasonable work accommodations for people who are at risk of severe illness from COVID-19 who are still under the **Stay at Home** advisement, such as telecommuting. Employers are encouraged to provide reasonable work accommodations for individuals who reside with or are caring for people who are at risk of severe illness from COVID-19, or facing child care needs while schools remain closed.

K. Children's Day Camps and Youth Sports Camps. Effective June 1, 2020, children's day camps, youth sports camps and exempt single skill-building youth camps may open in accordance with the requirements in **Appendix J** of this Order. Residential camps are not authorized to open at this time.

L. Specific Industry Requirements. Additional requirements for specific industries are included in the following Appendices to this Order:

1. Appendix A: Critical and Non-Critical Retail Requirements
2. Appendix B: Field Services
3. Appendix C: Non-Critical Office-Based Businesses
4. Appendix D: Personal Services
5. Appendix E: Limited Healthcare Settings
6. Appendix H: Non-Critical Manufacturing

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7. Appendix I: Restaurants
8. Appendix J: Children's Day Camps, Youth Sports Day Camps and Exempt Single Skill-Building Youth Camps
9. Appendix K: Outdoor Recreation

M. Houses of Worship. Houses of worship are encouraged to implement electronic platforms to conduct services whenever possible or to conduct more frequent services of 10 people or less to allow for compliance with **Social Distancing Requirements**. Effective June 4, 2020, houses of worship may open to 50% of the posted occupancy limit indoors not to exceed 50 people, whichever is less, while meeting the 6 feet distancing requirements in every direction between non-household members. Any additional rooms in the house of worship may host up to 10 people implementing 6 feet distancing requirements. For outdoor worship services, a house of worship must maintain 6 feet distance between non-household members and work with the appropriate local authority to obtain approval for the maximum number of individuals who may attend in the designated outdoor space. In addition to meeting the requirements of Section II.I of this Order, houses of worship shall also meet the following requirements:

1. Face coverings must be worn by staff, volunteers and congregants while on the premises of the house of worship, except for children 2 years old and under, those with trouble breathing, or those unable to remove a mask without assistance.
2. Houses of worship should follow the [Colorado Department of Health and Environment Cleaning Guidance](#), as well as the [CDC guidelines for Cleaning and Disinfecting Your Facility](#) in preparing their buildings prior to, during, and following any gathering. Restrooms and the worship space, particularly any metal or plastic on chairs, and all high touch surfaces or shared objects must be disinfected between services.

III. Definitions

A. Necessary Activities. For purposes of this PHO, individuals are encouraged to only leave their Residence to perform any of the following **Necessary Activities**, provided they comply at all times and to the greatest extent possible with **Social Distancing Requirements** below. People at risk of severe illness from COVID-19 are urged not to leave their residence except as necessary to receive medical care. People who are sick must not leave their residence except as necessary to receive medical care, and must not go to work, even for a **Critical Business**. **Necessary Activities** include:

1. Engaging in activities or perform tasks essential to their health and safety, or to the health and safety of their family or household members, including, but not limited to, pets and livestock, such as, by way of example only and without limitation, obtaining medical supplies, walking your dog, feeding barnyard animals, obtaining durable medical equipment, obtaining medication, visiting a healthcare professional, or obtaining supplies they need to work from home.

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2. Obtaining necessary services or supplies for themselves and their family or household members, or to deliver those services or supplies to others, such as, by way of example only and without limitation, food, pet supply, other household consumer products, and products or equipment necessary to maintain the safety, sanitation, and essential operation of a Residence.
3. Engaging in outdoor activity, such as, by way of example and without limitation, walking, hiking, nordic skiing, snowshoeing, biking or running. For purposes of outdoor activity, State parks will remain open to the public who live in the vicinity to engage in walking, hiking, biking, running, camping and similar outdoor activities, basketball and tennis courts may be open for use by individuals or members of the same household only, but all playgrounds, picnic areas, other similar areas conducive to public gathering, and attended areas shall be closed. For other parks, check with the local jurisdiction and follow any requirements for that jurisdiction. For ski resorts, the local public health agency must approve the ski resort's plan prior to opening. Additionally, the permitted outdoor activities in this PHO do not include activities that would violate the **Social Distancing Requirements** defined in Section III, below.
4. Performing work providing for businesses, government entities, and industries authorized Section II of this Order, or to otherwise carry out activities permitted in this Order.
5. Caring for a family member, a vulnerable person, or pet in another household, or to care for livestock kept at a location other than an individual's home.

B. Necessary Travel. For purposes of this Order, travel is Necessary for any of the following purposes: (1) providing or accessing **Necessary Activities, Minimum Basic Operations, Critical Government Functions**, and **Critical Businesses**, and other businesses or industries authorized in Section II of this Order; (2) receiving materials for distance learning, for receiving meals, and any other related services from educational institutions; (3) returning to a place of residence from outside the jurisdiction; (4) travel required by law enforcement or court order; (5) travel to transport children between separate households pursuant to a parenting plan or other agreement governing parental responsibilities; (6) non-residents returning to their place of residence; (7) moving to a new residence, including individuals whose Residence is unsafe due to domestic violence concerns.

C. Critical Business. Any business, including any for profit or non-profit, regardless of its corporate structure, engaged primarily in any of the commercial, manufacturing, or service activities listed in **Appendix F**, must continue to comply with the guidance and directives for maintaining a clean and safe work environment issued by the Colorado Department of Public Health and Environment (CDPHE) and any applicable local health department.

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Critical Businesses must comply with **Social Distancing Requirements** and all PHOs currently in effect to the greatest extent possible and will be held accountable for doing so. A list of Critical Businesses is contained in **Appendix F** to this Order.

D. Critical Government Functions. The provision, operation and support of the following state and local government functions shall continue:

1. Public safety (police stations, fire and rescue stations, correctional institutions, emergency vehicle and equipment storage, and, emergency operation centers)
2. Emergency response
3. Judicial branch operations including state and municipal courts, including attorneys if necessary for ongoing trials and required court appearances, unless appearances can be done remotely
4. The Colorado General Assembly, legislative bodies of municipal governments, and executive branch functions
5. Emergency medical (hospitals, ambulance service centers, urgent care centers having emergency treatment functions, and non-ambulatory surgical structures but excluding clinics, doctors offices, and non-urgent care medical structures that do not provide these functions)
6. Designated emergency shelters
7. Communications (main hubs for telephone, broadcasting equipment for cable systems, satellite dish systems, cellular systems, television, radio, and other emergency warning systems, but excluding towers, poles, lines, cables, and conduits)
8. Public utility plant facilities for generation and distribution (drinking water and wastewater infrastructure, hubs, treatment plants, substations and pumping stations for power and gas, but not including towers, poles, power lines, and oil and gas buried pipelines)
9. Transportation. All public and private airports, airlines, taxis, transportation network companies (such as Uber and Lyft), vehicle rental services, paratransit, and other private, public, and commercial transportation and logistics providers necessary for **Necessary Activities**
10. Transportation infrastructure (aviation control towers, air traffic control centers, and emergency equipment aircraft hangars), critical road construction and maintenance
11. Hazardous material safety
12. Services to at-risk populations and people who are at risk of severe illness from COVID-19

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13. Activities related to federal, state, and local elections, including any required acts of a political party, provided **Social Distancing Requirements** are observed to the greatest extent possible

14. Any government service, state or local, required for the public health and safety, government functionality, or vital to restoring normal services

15. Election operations, including but not limited to election judges, signature gatherers/circulators, campaign workers and volunteers

E. Field Services means a service that is being provided out in the field as opposed to a company property, including third party private properties, such as a third party household.

F. Gym means a building or room used for indoor sports or exercise, such as fitness, dance, exercise or group classes, exercise studios and centers, recreation centers, bowling alleys, pools, and other indoor athletic facilities.

G. Horse track means a licensed race track, which is any premises licensed pursuant to this Article 32 of Title 44 of the Colorado Revised Statutes for the conduct of racing. Sections 44-32-102(2)(a), (2)(b), (3), (8) & (24), C.R.S.

H. Minimum Basic Operations. The minimum necessary activities to (1) maintain the value of the business's inventory, ensure security, process payroll and employee benefits, or for related functions; or (2) facilitate employees of the business being able to continue to work remotely from their residences are allowable pursuant to this Order; continue filling online product orders and to process customer orders remotely. Any business supporting **Minimum Basic Operations** must comply at all times with **Social Distancing Requirements**.

I. Non-Critical Office-Based Business means any commercial business that is conducted in an office and not a production environment and is not included in the list of **Critical Businesses** in **Appendix F**.

J. Non-Critical Retail means any retail service that is not included in the list of critical retail services in **Appendix F**. Examples of **Non-Critical Retail** include retailers of clothing, home goods, cell phone stores, mattresses, appliances, thrift shops, apothecaries, vape and tobacco shops, craft, hobby and fabric stores, fishing tackle retailers, sporting goods, boutiques, etc.

K. Limited Healthcare Settings means those locations where certain healthcare services are provided, including acupuncture (not related to personal services), athletic training (not related to personal services), audiology services, services by hearing aid providers,

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chiropractic care, massage therapy (not related to personal services), naturopathic care, occupational therapy services, physical therapy, and speech language pathology services. These individual services may only be performed with 10 or fewer people in a common business space at a maximum of 50% occupancy for the location, whichever is less, including both employees and patients, e.g. 5 chiropractors providing services to 5 customers, with **Social Distancing Requirements** in place of 6 feet distancing between customers receiving services. Employees must wear medical grade masks at all times, and patients must wear at least a [cloth face covering](#) at all times. Services provided in **Limited Healthcare Settings** that are ordered by a medical, dental or veterinary practitioner, are subject to the requirements of Reference PHO 20-29; otherwise, the services are subject to the requirements of PHO 20-28.

L. Personal Services means services and products that are not necessary to maintain an individual's health or safety, or the sanitation or essential operation of a business or residence. **Personal Services** include, but are not limited to, pastoral services except as specified in **Appendix F**, personal training, dog grooming, or body art and also applies to noncritical professionals regulated by the Division of Professions and Occupations, within the Department of Regulatory Agencies (DORA) including but not limited to services provided by personal beauty professionals such as hairstylists, barbers, cosmetologists, estheticians, nail technicians, as well as massage therapists, whose work requires these professionals to be less than six feet from the person for whom the services are being provided. Massage therapy services ordered by a healthcare professional should consult **Executive Order D 2020 027**. These individual services may only be performed with 10 or fewer people in a common business space at a maximum of 50% occupancy for the location, whichever is less, including both employees and customers, e.g. 5 hairstylists providing services to 5 customers, with **Social Distancing Requirements** of at least 6 feet distancing between different customers receiving services. Both employees and customers must wear at least a cloth face covering or a medical grade mask at all times. Only services that can be performed without the customer removing their mask are permitted.

1. Effective June 4, 2020, individual personal services may be performed at 50% of the posted occupancy limit not to exceed 50 people in a common business space.

M. "Safer at Home" means individuals stay in your place of residence as much as possible, and avoid unnecessary social interactions.

N. Social Distancing Requirements. To reduce the risk of disease transmission, individuals shall maintain at least a six-foot distance from other individuals, wash hands with soap and water for at least twenty seconds as frequently as possible or using hand sanitizer, cover coughs or sneezes (into the sleeve or elbow, not hands), regularly clean high-touch surfaces, and not shake hands.

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O. Stay at Home means to stay in your place of residence, which includes hotels, motels, and shared rental facilities, and not leave unless necessary to provide, support, perform, or operate **Necessary Activities, Minimum Basic Operations, Critical Government Functions, and Critical Businesses**.

P. “Vulnerable Individual”, also known as an individual at risk of severe illness from COVID-19, means:

1. Individuals who are 65 years and older;
2. Individuals with chronic lung disease or moderate to severe asthma;
3. Individuals who have serious heart conditions;
4. Individuals who are immunocompromised;
5. Pregnant women; and
6. Individuals determined to be high risk by a licensed healthcare provider.

IV. Postsecondary Institutions. Programs and courses at postsecondary institutions that cannot be conducted remotely, generally due to equipment requirements, may be conducted through limited in-person instruction. Institutions that wish to resume providing in-person instruction must inform the Colorado Department of Higher Education and ensure that **Social Distancing Requirements** are strictly followed. Additionally, students are allowed to opt out of the in-person instruction; such students will be treated no differently than students in all other courses that have ceased in-person instruction due to the COVID-19 situation.

V. Variance Requests. Any Colorado county may request a variance from the Colorado Department of Public Health and Environment authorizing implementation of an alternative COVID-19 suppression plan that differs from part or all the requirements of **Executive Order D 2020 091** or this Order. The variance request must include an alternative COVID-19 suppression plan endorsed by the local public health agency and adopted by the county commissioners or other county-level governing body, in addition to verification from local hospitals that they have the capacity to serve all people needing their care. Further guidance on variance requests is contained in **Appendix G**.

VI. Enforcement

This Order will be enforced by all appropriate legal means. Local authorities are encouraged to determine the best course of action to encourage maximum compliance. Failure to comply with

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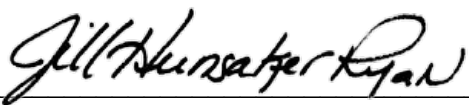
this order could result in penalties, including jail time, and fines, and may also be subject to discipline on a professional license based upon the applicable practice act.

VII. Severability

If any provision of this Order or the application thereof to any person or circumstance is held to be invalid, the remainder of the Order, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Order are severable.

VIII. Duration

This Order shall become effective on Tuesday June 2, 2020 and will expire 30 days from June 1, 2020, unless extended, rescinded, superseded, or amended in writing.



Jill Hunsaker Ryan, MPH
Executive Director

June 2, 2020
Date

Appendix A. Critical and Non-Critical Retail Requirements

Appendix B. Field Services

Appendix C: Non-Critical Office-Based Businesses

Appendix D: Personal Services

Appendix E: Limited Healthcare Settings

Appendix F: Critical Businesses List

Appendix G: County Variance Requests

Appendix H: Non-Critical Manufacturing

Appendix I: Restaurants

Appendix J: Children's Day Camps, Youth Sports Day Camps And Exempt Single Skill-Building Youth Camps

Appendix K: Outdoor Recreation

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APPENDIX A. CRITICAL AND NON-CRITICAL RETAIL REQUIREMENTS

I. Effective April 27, 2020, in addition to meeting the requirements of this Order, and specifically Section II.I, **Non-Critical Retail** may operate and offer goods through delivery service, window service, walk-up service, drive-through service, drive-up service, curbside delivery, or any other manner allowing for strict compliance with mandatory **Social Distancing Requirements**, except as prohibited or limited by this Order. Restricting interactions to curbside pick-up or delivery minimizes touch. **Non-Critical Retailers** are encouraged to continue curbside pick-up or delivery for longer term service wherever possible. **Critical** and **Non-Critical Retailers** must implement the requirements in Section II.I, in addition to the specific requirements in this Appendix. Indoor malls are addressed separately in Section III of this **Appendix**. Libraries, both public and private, are limited to providing window service, walk-up service, drive-through service, or curbside delivery.

A. **Critical** and **Non-Critical Retail** must implement the following measures within the workplace to minimize disease transmission:

1. Elevate and increase frequency of [cleaning practices](#), including cleaning and disinfection of high touch areas.
2. Restrict return policy to only items that can be properly sanitized prior to re-selling.
3. Post signage for employees and customers on good hygiene and other sanitation practices.

B. **Critical** and **Non-Critical Retail** must implement the following measures regarding employees to minimize disease transmission:

1. Provide guidance and encouragement on maintaining 6 foot distancing between both employees and employees and customers.
2. Provide appropriate face coverings and gloves to all employees whenever possible, and also allow employees who can to provide their own appropriate face coverings and gloves for work activities. Employees without face coverings shall not perform tasks that require engagement with the public or with other coworkers.
3. Encourage frequent breaks to allow employees to wash or sanitize their hands.
4. Require employees to stay home when showing any symptoms or signs of sickness.

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5. Provide personal protective equipment (PPE) for employees who are managing deliveries, returns, etc.

C. Employers must implement the following measures regarding customers to minimize disease transmission:

1. Require 6 foot distancing measures wherever possible, such as marked space in pick up lines.

II. Effective May 1, 2020, **Non-Critical Retail** may open at fifty percent (50%) capacity for in-person services if the business can demonstrate compliance with all of the following requirements:

A. **Critical and Non-Critical Retail** must continue implementing the measures within the workplace listed in Section I.A of this **Appendix A**, and in addition:

1. maintain 6 foot distancing between patrons and employees;
2. effectively symptom monitor employees as listed in Section II.I;
3. provide face coverings, and gloves as necessary and appropriate, to employees;
4. ensure ability to adequately clean and disinfect both back-room and retail spaces; and
5. provide dedicated, in-store hours for vulnerable or at-risk individuals.

B. **Critical and Non-Critical Retail** must implement the measures regarding employees listed in Section I.B of this **Appendix A**.

C. **Critical and Non-Critical Retail** must implement the measures to minimize disease transmission for customers listed in Section I.C of this **Appendix A** in addition to the following measures:

1. limit the number of customers on the premises as needed to make 6 foot distancing between customers attainable;
2. provide decals and demarcation for waiting area in lines that meet social distancing criteria;
3. create signage encouraging vulnerable and at-risk individuals to refrain from shopping outside of dedicated hours set aside for those who are more vulnerable or at-risk;
4. create signage to encourage the use of masks and gloves by customers while on the premises; and

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5. provide hand sanitizer and wipes at entrances and other high-traffic locations to the greatest extent possible.

III. Indoor Malls. Indoor malls must not open to the public for entry. Retailers operating in indoor malls that have their own exterior entrance from the outside may operate as all other **Non-Critical Retail** in accordance with this **Appendix**. Retailers and service providers operating in an indoor mall that do not have their own exterior entrance from the outside remain closed; however, these vendors may establish delivery service, including curbside delivery, in strict compliance with mandatory **Social Distancing Requirements**.

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APPENDIX B: FIELD SERVICES

I. Effective April 27, 2020, **Field Services** may resume if the business can demonstrate compliance with the requirements in Section II.I of this Order, in addition to the following requirements specific to **Field Services**:

A. Employers must implement the following measures regarding employees to minimize disease transmission:

1. adhere to all general rules or guidance on social gathering limitations when working out of the office;
2. implement procedures for field-based employees to monitor for symptoms and report-in to management daily on health status.
3. comply with the **Social Distancing Requirements** and maintain a 6 foot distance between employees and from their customers;
4. provide gloves and masks for any customer interactions or work being done in third-party home or office spaces;
5. When scheduling or conducting field services, either the employer or an employee must inquire whether third-party homes have individuals symptomatic for COVID-19 or have been in contact with known positive cases, and exercise caution when inside the home and interacting with anyone in the home if they do;
6. maintain a detailed log of customer interactions to enable contact tracing if it becomes necessary. The log should include name, date, and location of contact, as well as the contact's phone number and/or email address;
7. require that all tools or equipment be sanitized after each customer visit;.
8. prioritize work accommodations for individuals at risk of severe illness from COVID-19, prioritizing telecommuting;
9. provide guidance and encouragement on personal sanitation, including frequently washing hands. This guidance should include all of the following:
 - a. frequently and thoroughly wash your hands with soap and water for at least 20 seconds. If soap and water are not available, use hand sanitizer with at least 60% alcohol;
 - b. cover coughs and sneezes with a tissue, then throw the tissue in the trash, or use your inner elbow or sleeve;
 - c. avoid touching your eyes, nose, and mouth with unwashed hands;
 - d. stay home if you're sick, and keep your children home if they are sick; and
 - e. clean high touch surfaces in your home, and personal items such as cell phones, using regular household products.

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B. Employers must implement the following measures regarding customers to minimize disease transmission:

1. provide estimates, invoices, receipts, and other documentation electronically to negate the need for paper;
2. provide contactless payment options in the field whenever possible;
3. encourage customers to maintain 6 foot distancing from field service employees; and
4. encourage customers to use facial coverings when field services are being conducted.

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APPENDIX C: NON-CRITICAL OFFICE-BASED BUSINESSES

I. Effective May 4, 2020, **Non-Critical Office-based Businesses** may resume at fifty percent (50%) of their in-office occupancy if the business can demonstrate compliance with the requirements of this Order, including Section II.I, and all of the following:

A. Employers must implement the following measures within the workplace to minimize disease transmission:

1. ensure a minimum of 6 feet of space between all desks and workspaces;
2. modify the flow of people traffic to minimize contacts, such as identifying doors for entry or exit only;
3. conduct standard office cleaning with increased frequency and supplement with sanitization of high touch areas, in accord with [CDPHE guidelines](#);
4. provide employees with cleaning and disinfecting products and guidance on daily workspace cleaning routines; and
5. post signage for employees and customers on good hygiene and new office practices.

B. Employers must implement the following measures regarding employees to minimize disease transmission:

1. maintain in-office occupancy at no more than 50% of total by maximizing use of telecommuting and developing in-office rotation schedules;
2. minimize the number of in-person meetings and maintain 6 foot distancing in those meetings;
3. provide guidance and encouragement on maintaining 6 foot distancing and taking breaks to wash hands;
4. require gloves and masks for any customer interactions; and
5. allow telecommuting to the greatest extent possible.

C. Employers must implement the following measures regarding customers to minimize disease transmission:

1. require 6 foot distancing measures wherever possible, such as marked space in check-out lines;
2. encourage customers to use facial coverings when on the business premises;
3. provide hand sanitizer at entrances and other high-traffic locations; and
4. implement hours where service is only provided to individuals at risk of severe illness from COVID-19 if possible.

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APPENDIX D: PERSONAL SERVICES

I. Effective May 1, 2020, **Personal Services** may resume if the business can demonstrate compliance with the requirements of this Order, including Section II.I, and all of the following:

A. Employers and sole proprietors must implement the following measures within the workplace to minimize disease transmission:

1. Employ strict hygiene guidelines and cleaning and disinfection procedures for all contact surfaces and tools, in accordance with [CDPHE Worker and Customer Protection Guidelines for Non-Healthcare Industries](#);
2. Ensure a minimum of 6 feet of separation between clients and customers, including services for pets, when not directly performing service;
3. Post signage for employees and customers on good hygiene and safety measures being taken;
4. Minimize in-home and in-facility services with remote alternatives whenever possible, such as drive-by services or virtual meetings; and
5. Through June 3, 2020, limit individuals, including employees and customers, to no more than 10 people in a common business space at a maximum of 50% occupancy. Effective June 4, 2020, limit individuals including employees and customers, to no more than 50 people in a common business space at a maximum of 50% occupancy. All businesses offering services through employees or lessees in individual rooms must comply with the requirements of this Order for each room.

B. Employers must implement the following measures regarding employees to minimize disease transmission:

1. Services with close personal contact, such as beauty professionals, massage, etc., must implement the following:
 - a. wear a face covering and gloves at all times, or, if wearing gloves is not feasible or appropriate, meticulous hand washing;
 - c. change gloves and wash hands between every individual or pet served;
 - d. clean and disinfect all shared equipment and tools between every individual or pet served; and
 - e. maintain a detailed log of customer interactions to enable contact tracing if it becomes necessary. The log should include name, date, details of services performed, and location of contact, as well as the contact's phone number and/or email address.

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2. Personal services with low personal contact, such as movers or repair services, must implement the following:
 - a. maintain a minimum of 6 feet of separation between customers and adhere to social gathering limits of no more than 10 people. For real estate work, open houses are prohibited;
 - b. require face coverings and, if feasible, gloves for any customer interactions; and
 - c. provide guidance on strict hygiene precautions to employees.

C. Personal Services must implement the following measures regarding customers to minimize disease transmission:

1. provide customer services by appointment only, do not allow walk-ins or waiting for an appointment, and limit all group classes of any kind for individuals or for pets, pet training classes, or other activities associated with picking up pets to no more than 10 customers at a time and all following **Social Distancing Requirements**;
2. require customers to wear face coverings, except for personal training in a pool; if a customer does not have a mask, a "disposable mask" could be provided;
3. conduct symptoms check for all customers of services with close personal contact and decline to provide services to anyone who has symptoms. A sample form can be found [here](#); and
4. provide contactless payment options whenever possible.

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APPENDIX E: LIMITED HEALTHCARE SETTINGS

I. Effective April 27, 2020, **Limited Healthcare Settings** may resume if the healthcare entity can demonstrate compliance with the requirements of this Order, including Section II.I and may restart voluntary and elective surgeries and procedures in limited healthcare facilities and offices with required personal protective equipment (PPE) in accord with the priorities, requirements, and specific criteria below.

- A.** Employers and sole proprietors of **Limited Healthcare Settings** must implement the following measures within the overall workplace, including administrative and front office operations, to minimize disease transmission:
1. The practice must have access to adequate PPE in order to sustain recommended PPE use for its workforce for two weeks without the need for emergency PPE-conserving measures. If a practice proposes to extend the use of or reuse PPE, it must follow CDC guidance.¹
 2. The practice must implement strict infection control policies as recommended by the CDC.²
 3. The practice must ensure a minimum of 6 feet of separation between clients and patients, when not directly performing service, with no more than ten (10) people in a common business space at a maximum of 50% occupancy, and all settings offering services in individuals rooms must comply with the requirements of this Order for each room.
 4. The practice must post signage for employees and patients on good hygiene and safety measures being taken.
 5. The practice must minimize in-home and in-facility services with remote alternatives whenever possible, such as drive-by services or virtual meetings.
 6. Practices must maintain a plan to reduce or stop voluntary and elective surgeries and procedures should a surge/resurgence of COVID-19 cases occur in their region.
- B.** Employers of **Limited Healthcare Settings** must implement the following measures regarding employees to minimize disease transmission:
1. Services with close, direct personal contact must implement the following:
 - a. wear medical grade mask and gloves at all times;
 - b. change gloves and wash hands between every patient;

¹ <https://www.cdc.gov/coronavirus/2019-ncov/hcp/ppe-strategy/index.html>

² <https://www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control.html>

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- c. clean and disinfect all shared equipment and tools between every patient; and
 - d. maintain a detailed log of patient interactions to enable contact tracing if it becomes necessary. The log should include name, date, details of services performed, and location of contact, as well as the contact's phone number
- 2. Services with low personal contact must implement the following:
 - a. maintain a minimum of six 6 feet of separation between customers and limit to no more than ten (10) people in a common business space at a maximum of 50% occupancy.
 - b. require face coverings and, if feasible, gloves for any customer interactions; and
 - c. provide guidance on strict hygiene precautions to employees.
- 3. The practice must require all administrative personnel to wear a facemask, that can be cloth if necessary. Masks may be removed when social distancing of at least 6 feet if possible (e.g., after entering a private office). In order to ensure staff can take off their masks for meals and breaks, scheduling and location for meals and breaks should ensure that at least a 6-foot distance can be maintained between staff when staff needs to remove their mask. It is important for healthcare settings to emphasize that hand hygiene is essential to maintaining employee safety, even if staff are wearing masks. If the facemask is touched, adjusted or removed, hand hygiene should be performed.

C. Limited Healthcare Settings must implement the following measures regarding customers to minimize disease transmission:

- 1. The practice must provide services by appointment only, do not allow walk-ins or waiting for an appointment;
- 2. The practice must require patients to wear face coverings; if a patient does not have a mask, a "disposable medical mask" could be provided;
- 3. The practice must conduct symptom checks for all patients, decline to provide services to anyone who has symptoms, and refer them to their primary care physician. A sample form can be found [here](#); and
- 4. The practice must provide contactless payment options whenever possible;
- 5. The practice must follow social distancing protocols of maintaining at least a 6-foot distance between individuals wherever possible such as in waiting rooms and other small spaces, and should use physical barriers within patient care areas when possible.
- 6. The practice must appropriately schedule patients, so that providers have sufficient time to change PPE and ensure rooms and equipment can be cleaned and disinfected between each patient.

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7. The practice should continue to maximize the use of telehealth and virtual office or clinic visits.
8. The practice should use virtual waiting rooms when possible, with patients who are able to wait in their cars not entering the office until they can be moved immediately to an exam room.
9. The practice should implement source control for everyone entering the office or clinic, including requiring all patients and visitors to wear a cloth mask when entering any healthcare building, and if they arrive without a mask, one should be provided.

D. As best practice, it is recommended that once voluntary and elective surgeries and procedures resume, **Limited Healthcare Settings** reassess their operations every two weeks, in order to ensure:

1. All of the above approaches and criteria are being met;
2. Procedures are prioritized based on whether their continued delay will have an adverse health outcome.
 - a. Voluntary and elective surgeries and procedures should be prioritized based on indication and urgency³;
3. Strong consideration is given to the balance of risks versus benefits for patients in higher-risk groups such as those over age 65 and those with compromised immune systems or lung and heart function;
4. All patients are pre-screened for COVID-19 risk factors and symptoms prior to delivering care, via telehealth when applicable; and
5. Compliance with the guidance and directives for maintaining a clean and safe work environment issued by the CDPHE and any applicable local health department for critical businesses is maintained, including compliance with **Social Distancing Requirements** and all PHOs currently in effect to the greatest extent possible.

³ Urgent and emergent care should continue in accordance with OHA and CMS guidance.

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APPENDIX F: CRITICAL BUSINESSES

Critical Business. Any business, including any for profit or non-profit, regardless of its corporate structure, engaged primarily in any of the commercial, manufacturing, or service activities listed below, may continue to operate as normal. **Critical Businesses** must comply with the guidance and directives for maintaining a clean and safe work environment issued by the Colorado Department of Public Health and Environment (CDPHE) and any applicable local health department. **Critical Businesses** must comply with **Social Distancing Requirements** and all PHOs currently in effect to the greatest extent possible and will be held accountable for doing so. **Critical Businesses** do NOT include health clubs as defined in C.R.S. § 6-1-102(4.6), fitness and exercise gyms, and similar facilities, or any of the other businesses required to close by PHO 20-22.

“**Critical Business**” means:

1. Healthcare Operations, Including:

- Hospitals, clinics, and walk-in health facilities
- Medical and dental care, including ambulatory providers
- Research and laboratory services
- Medical wholesale and distribution
- Home health care companies, workers and aides
- Pharmacies
- Pharmaceutical and biotechnology companies
- Behavioral health care providers
- Veterinary care and livestock services
- Nursing homes, residential health care, or congregate care facilities
- Medical supplies and equipment manufacturers and providers, including durable medical equipment technicians and suppliers
- Blood banks

2. Critical Infrastructure, Including:

- Utilities and electricity, including generation, transmission, distribution and fuel supply
- Road and railways
- Oil and gas extraction, production, refining, storage, transport and distribution
- Public water and wastewater

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- Telecommunications and data centers
- Transportation and infrastructure necessary to support critical businesses
- Hotels, and other places of accommodation
- Businesses and organizations that provide food, shelter, social services, and other necessities of life for economically disadvantaged, persons with access and functional needs, or otherwise needy individuals
- Food and plant cultivation, including farming crops, livestock, food processing and manufacturing, animal feed and feed products, rendering, commodity sales, and any other work critical to the operation of any component of the food supply chain
- Any business that produces products critical or incidental to the construction or operation of the categories of products included in this subsection
- Flight schools

3. Critical Manufacturing, Including:

- Food processing, manufacturing agents, including all foods and beverages
- Chemicals
- Computers and computer components
- Medical equipment, components used in any medical device, supplies or instruments
- Pharmaceuticals
- Sanitary products
- Telecommunications
- Microelectronics/semiconductor
- Agriculture/farms
- Household paper products
- Any business that produces products critical or incidental to the processing, functioning, development, manufacture, packaging, or delivery of any of the categories of products included in this subsection
- Any manufacturing necessary to support a **Critical Business**

4. Critical Retail, Including:

- Grocery stores including all food and beverage stores
- Farm and produce stands
- Gas stations and convenience stores
- Restaurants and bars as authorized in **Appendix I** of this Order

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- Marijuana dispensary (only for the sale of medical marijuana or curbside delivery pursuant to **Executive Order D 2020 011**)
- Liquor stores
- Firearms stores
- Hardware, farm supply, and building material stores
- Establishments engaged in the retail sale of food and any other household consumer products (such as cleaning and personal care products), excluding retailers of only health and nutrition-related products (vitamins, minerals, supplements, herbs, sports nutrition, diet and energy products)
- Establishments engaged in the sale of products that support working from home (this exclusion does not include businesses that primarily sell hobby craft supplies)

5. Critical Services, Including:

- Trash, compost, and recycling collection, processing and disposal
- Mail and shipping services, and locations that offer P.O. boxes
- Self-serve laundromats and garment and linen cleaning services for critical businesses
- Building cleaning and maintenance
- Child care services
- Automobile rental, automobile online sales with no touch delivery service, auto supply and repair (including retail dealerships that include repair and maintenance, but not in person retail sales)
- Warehouse/distribution and fulfillment, including freight distributors
- Funeral homes, crematoriums, and cemeteries may operate at 50% of the posted occupancy limit not to exceed 50 people, with strict compliance with **Social Distancing Requirements** for employees and any attendees of services
- In-person pastoral services for individuals who are in crisis or in need of end of life services provided social distancing is observed to the greatest extent possible.
- Houses of worship may operate as authorized in Section II.M of this Order
- Storage for **Critical Businesses**
- Animal shelters, animal boarding services, animal rescues, zoological facilities, animal sanctuaries, and other related facilities
- Moving services

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- In person group counseling or recovery meetings for substance abuse or behavioral health following social distancing of 6 feet and no more than 10 participants

6. News Media

- Newspapers
- Television
- Radio
- Other media services

7. Financial and Professional Institutions, Including:

- Banks and credit unions
- Insurance and payroll
- Services related to financial markets
- Professional services, such as legal, title companies, or accounting services, real estate appraisals and transactions

8. Providers of Basic Necessities to Economically Disadvantaged Populations, Including:

- Homeless shelters and congregate care facilities
- Food banks
- Human services providers whose function includes the direct care of patients in State-licensed or funded voluntary programs; the care, protection, custody and oversight of individuals both in the community and in State-licensed residential facilities; those operating community shelters and other critical human services agencies providing direct care or support

9. Construction, Including but not Limited To:

- Housing and housing for low-income and vulnerable people
- Skilled trades such as electricians, plumbers
- Other related firms and professionals who provide services necessary to maintain the safety, sanitation, and critical operation of residences and other **Critical Businesses** or **Critical Government Functions**, and other essential services

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10. Defense

- Defense, security, and intelligence-related operations supporting the State of Colorado, local government, the U.S. Government or a contractor for any of the foregoing
- Aerospace operations
- Military operations and personnel
- Defense suppliers

11. Critical Services Necessary to Maintain the Safety, Sanitation and Critical Operations of Residences or Other Critical Businesses, Including:

- Law enforcement
- Fire prevention and response
- Building code enforcement
- Security
- Emergency management and response
- Building cleaners or janitors
- General maintenance whether employed by the entity directly or a vendor (including maintenance and repair of ordinary household and business appliances but not in-person retail sales of such products)
- Automotive and bicycle repair
- Disinfection
- Snow removal
- Bail bonds agents
- Pest control

12. Vendors that Provide Critical Services or Products, Including Logistics and Technology Support, Child Care and Services:

- Logistics
- Technology support for online and telephone services
- Child care programs and services
- Government owned or leased buildings
- **Critical Government Functions**

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13. Educational Institutions that Provide Critical Services to Students and the General Public:

- P-12 public school and private schools for the purpose of providing meals, housing, facilitating or providing materials for distance learning, and providing other essential services to students, provided that **Social Distancing Requirements** are observed.
- Postsecondary institutions, including private and public colleges and universities, for the purpose of facilitating distance learning, providing in person classroom or laboratory education for less than 10 students per classroom or lab in medical training fields only, or performing essential functions, provided that **Social Distancing Requirements** are observed, such as security, medical and mental health services, housing, food services, and critical research.

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APPENDIX G: COUNTY VARIANCE REQUESTS

Governor Jared Polis issued **Executive Order D 2020 044 Safer at Home** effective April 27, 2020. The key elements of the Order are that most people still stay at home as much as possible and avoid unnecessary social interactions; vulnerable populations continue to stay at home except to support or perform necessary activities or participate in critical government functions or critical businesses; there is limited reopening of postsecondary institutions, and certain business operations are permitted; people are still encouraged to stay within their county of residence or employment as much as possible; public and private gatherings of more than ten (10) persons are prohibited; and Coloradans are advised to wear non-medical cloth face coverings that cover the nose and mouth whenever in public.

Any county that desires to apply for a variance from part or all of the executive order may do so after meeting the following criteria and submitting an alternative COVID-19 suppression plan to be approved or denied by the Colorado Department of Public Health and the Environment (CDPHE). The application must be submitted directly to CDPHE through the online application process, found [here](#).

Criteria for variance consideration:

- 1) The local public health agency endorses the alternative plan;
- 2) Local hospitals can verify that they have the capacity to serve all people needing their care;
- 3) The county commissioners or, in the case of the City and County of Denver, the mayor of Denver, or, in the case of the City and County of Broomfield, the city council, vote affirmatively to adopt the alternative plan in place of the state Safer-At-Home order; and
- 4) Counties with sovereign tribal nations (Ute Mountain Ute and Southern Ute Indian tribes) must obtain a letter of support from tribes and include it with their variance application.

The local variance process allows communities that are not experiencing a high rate of transmission to tailor social distancing policies to local conditions, in order to promote community wellness and economic stability. To protect other communities and hospital systems statewide, it is paramount that the local variance process only be used when transmission is at a low enough level to be suppressed through testing and containment efforts to detect positive cases, ensure successful isolation and quarantine close contacts. Examples of local conditions that should be considered in seeking a variance include: a low number of new cases per day, cases declining for the past 14 days, incidence below the state average, declining positive tests as a percent of total tests for the past 14 days, low and stable case growth rate or equivalent, and having an early warning system to detect an increase in community spread or outbreaks, with

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triggers for tightening restrictions to prevent a breach of local hospital system capacity. Considerations and triggers should be documented in the plan submitted to CDPHE.

Variance requests will be evaluated based on local epidemiological data to assess whether the county requesting the variance has a disease prevalence that is low, medium, or higher than the statewide average. If higher, other metrics may be considered such as two-week case trend, percent positivity of tests and, whether outbreaks exist and are contained. The variance will be commensurate with the local virus transmission and disease burden.

CDPHE is available to provide technical assistance to any county considering a variance. The department will consider applications for variances based on the submitted plan's rationale for a step down and the presence of an early warning system with triggers for tightening back up. CDPHE reserves the right to approve or deny applications. All variances granted pursuant to this Order remain in effect until the Order expires without further extension or is terminated, unless automatically rescinded pursuant to the terms of the variance approval by CDPHE, rescinded for other reasons by CDPHE, or rescinded by the county.

Approved local variances may be rescinded at the discretion of the local public health agency based on changes to State executive or public health orders. If a variance request is rescinded at the local level, the state orders will remain in effect. Local public health agencies may also choose to maintain approved variance requests in the event that a State order becomes less restrictive than the approved variance. At no point may an approved variance request be altered to be less restrictive in any aspect than state orders without updated approval from the Colorado Department of Public Health and Environment.

Counties that choose to not comply with this executive order or an approved variance will be subject to the loss of emergency preparedness funds.

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APPENDIX H: NON-CRITICAL MANUFACTURING

I. Effective May 4, 2020, **Non-Critical Manufacturing** may resume if the business can demonstrate compliance with the requirements of this Order, including Section II.I, and all of the following:

A. Employers must implement the following measures within the workplace to minimize disease transmission:

1. Create and implement policies or procedures for all of the following:
 - i. Limiting group interactions to keep any group less than ten (10) people by
 - a. staggering of shift changes, breaks, lunches, etc., and
 - b. eliminating all-staff in-person meetings or lunches;
 - ii. Modifying the flow of people traffic to minimize contacts, such as arranging one-way flow of work and people;
 - iii. Implementing 6 foot distancing and impermeable barriers between employees whenever possible;
 - iv. Limiting the sharing of tools, equipment, or other resources to the greatest extent possible, and if not feasible, implement cleaning and disinfection protocols as often as possible for any such shared tool, equipment and resources; and
 - v. Requiring hand washing upon arrival and before departure, establishing set hand washing time frames throughout shifts, and providing additional hand washing stations if possible.
2. Conduct cleaning protocols as follows:
 - i. Daily deep cleaning and disinfecting and full cleaning in-between shifts in accordance with [CDPHE guidance](#); and
 - ii. Establish protocols to increase the frequency of sanitization in work and common spaces, following OSHA requirements and CDPHE guidance, [found here](#);
3. Provide contactless options, such as entry to the worksite, payments, etc., whenever applicable and possible;
4. Use paperless, electronic options whenever possible to reduce the use of sharing paperwork;
5. Ensure ventilation of work and break areas is in line with [OSHA guidance](#);
6. Support transportation arrangements that discourage carpooling; and
7. Develop a Preparedness and Response document in accordance with OSHA guidance.

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B. Employers must implement the following measures for employees to minimize disease transmission:

1. Provide guidance about how to comply with 6 foot distancing;
2. Designate workers to monitor and facilitate distancing on processing floor lines;
3. Require employees to use masks or face coverings, except where doing so would inhibit that individual's health;
4. Require employees to wash their hands upon arrival to and before departure from the facility, as well as frequently during workshifts, in accordance with the policy required in Section I.A.1.vi of this **Appendix**;
5. Disinfect work stations between shifts and/or at the end of the workday;
6. Group employees into teams or shifts that remain together;
7. Stagger employee lunch and break times;
8. Encourage all employees not critical to in-person operations to continue working from home or working remotely; and
9. Encourage the wearing of masks or other face coverings while carpooling or taking other forms of public transportation.

C. Employers must implement the following measures regarding customers to minimize disease transmission:

1. Prohibit entry to the worksite of all non-essential external visitors;
2. Conduct symptom checks for any essential visitors who will interact with employees;
3. Require essential visitors to wear masks or face coverings; and
4. Encourage 6 foot distancing and implement procedures to limit person-to-person interaction in inbound/outbound shipping areas.

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APPENDIX I: RESTAURANTS

I. Effective May 27, 2020, while **Restaurants** remain encouraged to continue curbside pick up and delivery, including alcohol pick up and delivery, **Restaurants** may resume in-person dining if the business can demonstrate compliance with the requirements of this Order, including Section II.I, and all of the following:

A. Employers must implement the following measures within the workplace to minimize disease transmission:

1. Indoor and outdoor in-person services
 - a. Post signage notifying patrons and employees of hygiene and sanitation expectations, including not entering if they are experiencing any symptoms.
 - b. Patrons in different parties must be a minimum of 6 feet apart. The spacing of tables should be a minimum of 6 feet to ensure proper distancing.
 - c. Limit party size to 8 people or less.
 - d. All employees must wear facial coverings that cover the nose and mouth.
 - e. Employees may utilize disposable gloves as normally required by their governing regulations. Employees that are directly involved with disinfecting equipment and surfaces within critical business and/or have direct contact with customers shall wear gloves when involved in these activities.
 - f. Cleaning and disinfection of all shared surfaces must be done between seatings.
2. Additional indoor dine-in service requirements include:
 - a. Limit service to no more than 50% indoor posted occupancy code limit, with no more than 50 people total, whichever is less.
 - b. Ensure proper ventilation per [OSHA guidance](#)
3. Restaurants must make every effort to maintain physical distancing at all times, both inside and outside the establishment, including:
 - a. Using a reservation system, exclusively if possible;
 - b. Disallowing close proximity to others outside the patron's group through eliminating communal or seat yourself options
 - i. Bar seating options should only be available if the bar is not being used for bar service;
 - c. Eliminating self-service stations or buffets; and
 - d. Provide appropriate signs or markings within the **Restaurant** to space lines, indicate which tables are unavailable, prohibit games and dance floors that encourage gatherings, and direct foot traffic.
4. Restaurants must implement measures to maintain the cleanliness and

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sanitation of the restaurant, including:

- a. Minimize or eliminate high touch surfaces and multi-use objects, such as games, table cloths if used for multiple seatings, permanent menus, and condiments, and clean and disinfect any shared objects between uses;
- b. Increase cleaning and disinfection protocols and track with publicly posted cleaning logs including:
 - i. Clean and disinfect restrooms every hour, and
 - ii. Block off stalls and urinals with proper signage to adhere to 6 feet distance between patrons; and
- c. Use disposable items wherever possible, such as single-use menus and condiments.

B. Employers must implement the following measures for employees to minimize disease transmission:

1. Establish a minimum of 6 foot physical distancing standards and train employees on maintaining distancing between employees to the greatest extent possible
 - a. Consider implementing workflow requirements, dividers at pay counters and hostess areas, and modifying the menu to free up kitchen space.
 - b. Limit group interactions including staggering of shift changes, breaks, no consumption of family or shift meals onsite, etc.
 - c. Conduct virtual staff meetings whenever possible, any all staff meetings must meet 6 foot distancing requirements.
2. Face coverings and gloves
 - a. Require employees to wear facial coverings at all times, and encourage the use of gloves when in contact with customers or goods.
 - b. Require facial coverings and encourage gloves for vendors, suppliers, and contract workers entering the licensed establishment.
3. Employee sanitary requirements
 - a. Encourage frequent breaks to wash hands (at least every 30 minutes) including upon arrival and departure.
 - b. Strict adherence to the hygienic practices listed in the *Colorado Retail Food Regulations* regarding hand washing and glove use.

C. Employers should implement as many of the following measures as feasible regarding customers to minimize disease transmission and assist in any necessary outbreak investigations:

1. To facilitate notifying customers if a disease exposure occurs, consider
 - a. providing an option for customers to “sign in”, and
 - b. utilizing a reservation system;
2. Implement as feasible the following low or no touch options:
 - a. Provide contactless payment options, and
 - b. Continue curbside pick up/delivery options and recommend for

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- vulnerable individuals or those unable to adhere to hygienic and distancing requirements;
3. Ensure 6 foot distancing at all times by implementing the following:
 - a. Block of lobbies or waiting areas completely, or establish customer waiting areas that maintain proper social distancing from other guests, and
 - b. Restrict standing or congregating in public spaces such as the bar area, entrance or exit; and
 4. Request facial coverings be worn by customers when not seated for dining, and consider refusing service to customers who refuse to adhere to hygiene and social distancing requirements.

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APPENDIX J: CHILDREN'S DAY CAMPS, YOUTH SPORTS DAY CAMPS AND EXEMPT SINGLE SKILL-BUILDING YOUTH CAMPS

- I. Effective June 1, 2020, summer camps and sports camps may open for business if the camp operator can demonstrate compliance with the requirements in this Appendix.
 - A. Prior to hosting a camp, the camp operators must create a plan that implements all of the following:
 1. All activities, including recreation, transportation, and food service must comply with the following restrictions:
 - a. Groups of campers are limited to 25 or fewer outdoors, and 10 or fewer indoors per room, and shall not mix with other groups.
 - b. Six feet physical distancing is required at all times, which may limit further the size of the group due to the size of the space.
 - c. Require face coverings during transportation in camp vehicles to and from the camp.
 2. For staff and camper health and safety:
 - a. Provide adequate personal protective equipment (PPE) for staff who supervise and care for ill campers, staff, and volunteers.
 - b. Determine the staffing needs, including the availability of substitute staff if staff or volunteers become ill or are exposed.
 - c. Ensure space is available to isolate ill staff and campers (cots, bedding, restrooms, and supervision).
 - d. Ensure the on-call availability of a nurse or health care professional.
 - e. Establish protocols for responding and reporting cases to health care staff, local public health authorities, and CDPHE.
 - f. Prepare procedures for closures following a case or outbreak of COVID-19.
 - g. Provide access to or sufficient supplies of all of the following:
 - i. public restrooms, drinkable water sources, and picnic or other eating areas during activities at outdoor locations;
 - ii. handwashing/hand sanitizing locations; and
 - iii. adequate cleaning and disinfecting supplies
 - h. Train camp staff and volunteers on the requirements of this Order, as well as prevention, transmission, and care of COVID-19 illness.
 3. Single-night overnight excursions are permitted so long as the campers and staff remain strictly cohorted.
 - B. Camp operators must meet all of the following requirements while camps are in session:
 1. Staff, volunteer and camper health.
 - a. Screen staff, volunteers and campers for symptoms and close-contact exposures upon arrival. Exclude ill individuals from the camp, and encourage them to use the [CDPHE Symptom Tracker](#)

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- b. Staff or volunteers sent home must adhere to [isolation](#) and exclusion requirements.
 - c. Establish protocols for staff, volunteers and campers to alert health care staff of symptoms in themselves or campers.
 - d. Determine if any staff or volunteers are at a higher risk for COVID-19 and consider whether job duties that don't involve interaction with others are advisable.
2. Require staff, volunteers and campers to do all of the following:
 - a. Remain with the same group of campers and maintain physical distancing of at least 6 feet whenever possible, including during meals and recreation;
 - b. Wash hands upon arrival, before eating, and at regular intervals throughout the day;
 - c. Stagger activities as much as possible to avoid any mixing of groups, and
 - d. Wear masks or face coverings whenever possible.
3. Post signs or mark spaces to ensure 6 foot minimum distancing, and limit any activities that are not conducive to maintaining this distance.
4. Educate campers as needed on COVID-19 prevention, including respiratory etiquette and good hygiene, in accordance with public health guidance.
5. Ensure sufficient cleaning and disinfecting of commonly touched surfaces, equipment, and vehicles throughout the camp.
6. Provide frequent communication with all families of enrolled campers related to the occurrences of COVID-19 at the camp, the camp's responses, and all issues in the public health order.

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APPENDIX K: OUTDOOR RECREATION

I. Effective June 4, 2020, outdoor recreation services or activities, including non-guided and guided recreation, equipment rentals, river outfitters, rafting, Jeep tours, developed hot springs, zip lines, ropes courses, and outdoor artificial climbing walls, may operate if authorized by the local jurisdiction. Operators of recreational services and activities must meet any local policies in effect as well as all of the following requirements:

- A. Distancing and Capacity Requirements
 - 1. Maintain a distance of 6 feet from patrons and fellow employees, except in cases where it is unsafe to maintain that distance.
 - 2. Limit the number of people inside a facility to no more than 10 at one time, at a maximum of 50% occupancy.
 - 3. For vehicles used to transport patrons, the following requirements apply:
 - a. No closed-air vehicles or tours are allowed, as windows must remain open during the transport or tour.
 - b. Limit smaller vehicles or crafts to two household units not including guides, up to 10 people.
 - c. If larger vehicles or crafts (trains, large boats) can accommodate multiple individual household units and ensure appropriate physical distance between those groups, multiple units are permissible.
 - d. Limit passenger buses and vans to no more than 50% capacity, or less if distancing requirements cannot be met between groups, and prohibit use of the seat behind the driver.
 - 6. Conduct staging operations such as customer check-ins and end-of-trip operations outdoors with parties from different households spaced 6 feet apart.
 - 7. Maintain and promote physical distance during a tour or trip. Rafts or vehicles should not be full, and ensure distance between guide and patrons.
- B. Hygiene, Cleaning and Disinfection Requirements
 - 1. Post signs for employees and customers outlining good hand/respiratory hygiene and safety measures being taken. Signs should be in languages customers will understand. ([CDC examples](#))
 - 2. Encourage hand hygiene by directing customers to where they can wash their hands with soap and water or use hand sanitizer.
 - 3. Vehicles used to transport patrons must be cleaned and disinfected after each use.
 - 4. Disinfect all equipment used by patrons as well as surfaces or items in common contact with patrons between each use.
- C. Operators and Employees
 - 1. Wear face coverings at all times during staging and disembarking operations. Where safe, wear face coverings during trip operations.
 - 2. Operators must conduct symptom and temperature checks for employees and refer symptomatic employees to the CDPHE Symptom Tracker (Additional Guidance). Employees who exhibit COVID-19 symptoms should not come to work. Employees who develop COVID-19 symptoms while at work should immediately notify their supervisor and be separated from others, sent home, and

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referred to state or company support services.



COLORADO
Department of Public
Health & Environment

**SIXTH AMENDED PUBLIC HEALTH ORDER 20-28 SAFER AT HOME AND IN THE
VAST, GREAT OUTDOORS**

June 5, 2020

PURPOSE OF THE ORDER

I issue this Amended Public Health Order (PHO or Order) pursuant to the Governor's directive in **Executive Order D 2020 091** in response to the existence of thousands of confirmed and presumptive cases of Coronavirus disease 2019 (COVID-19) and related deaths across the State of Colorado. Further, as there is substantial evidence of community spread of COVID-19 throughout the State, it is crucial to take measures now that can mitigate further spread of disease in our communities.

FINDINGS

1. Governor Polis issued **Executive Order D 2020 003** on March 11, 2020, declaring a disaster emergency in Colorado due to the presence of COVID-19. Since that time, the Governor has taken numerous steps to implement measures to mitigate the spread of disease within Colorado, and has further required that several public health orders be issued to implement his orders.
2. I have issued public health orders pertaining to the limitation of visitors and nonessential individuals in skilled nursing facilities, intermediate care facilities, and assisted living residences; closing bars and restaurants to in-person services; defining the terms of the Governor's stay at home requirements and critical business designations; requiring hospitals to report information relevant to the COVID-19 response; and requiring the wearing of face coverings in the workplace and urging their use in public. These measures all act in concert to reduce the exposure of individuals to disease, and are necessary steps to protect the health and welfare of the public. Additionally, in reducing the spread of disease, these requirements help to preserve the medical resources needed for those in our communities who fall ill and require medical treatment, thus protecting both the ill patients and the healthcare workers who courageously continue to treat patients.
3. As of June 1, 2020, there are 26,577 known cases of COVID-19 in Colorado, 4,372 Coloradans have been hospitalized and 1185 Coloradans have died from COVID-19. Multiple sources of data show that COVID-19 transmission and the use of healthcare due to COVID-19

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have leveled off in Colorado. Our work to “flatten the curve” appears to be succeeding, and the Governor has ordered some lessening of the current Safer at Home restrictions as a result.

4. **Executive Order D 2020 091 Safer at Home and in the Vast, Great Outdoors** still strongly encourages that people at risk of severe illness from COVID-19, also known as **Vulnerable Individuals**, remain at home or in the great outdoors as much as possible, but allows limited reopening of postsecondary institutions and certain businesses. Additionally, individuals are encouraged to stay at home as much as possible and practice **Social Distancing** to reduce the likelihood of disease transmission, but certain activities, such as gathering in groups of no more than ten for activities, are permitted. As we continue to combat COVID-19 in our communities, continuing restrictions on individual travel and necessary activities remain appropriate.

INTENT

This Order sets forth the requirements for implementation of **Safer at Home and in the Vast, Great Outdoors**, as directed by Governor Polis. Individual restrictions remain in place concerning limitations on activities, travel, and public gatherings. Workplace restrictions remain necessary to implement standard **Social Distancing Requirements**, cleaning standards, and other items necessary to reduce the possibility of disease spread. Additionally, certain businesses and activities require specific guidance based on their business practices, and those are included in the appendices to this Order.

ORDER

Unless otherwise specifically noted in this Order, the requirements of this Order are effective June 1, 2020 and expire 30 days from June 1, 2020. This Order supersedes and replaces Public Health Orders 20-22 and 20-24, as amended.

I. **Safer at Home and in the Vast, Great Outdoors**

A. All individuals currently living within the State of Colorado are encouraged to stay at home or in the vast, great outdoors and avoid unnecessary interactions whenever possible in order to reduce the spread of disease. Individuals living in shared or outdoor spaces must at all times, to the greatest extent possible, comply with **Social Distancing Requirements**, defined in Section III below, and are encouraged to leave their residences only to perform or utilize **Necessary Activities**, defined in Section III below.

B. Individuals are urged to wear non-medical cloth face coverings that cover the nose and mouth whenever in public as required by **Executive Order D 2020 091**.

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C. All public and private gatherings are limited to no more than ten (10) individuals, except for the purposes expressly permitted in this PHO, which include **Necessary Activities**. Nothing in this Order prohibits the gathering of members living in the same residence.

D. People at risk of severe illness from COVID-19 are urged to stay in their residence at all times except as necessary to seek medical care. People at risk of severe illness from COVID-19 cannot be compelled to work for any business or government function, including a Critical Business or Critical Government Function, during the pendency of this pandemic emergency. People who are sick must stay in their residence at all times except as necessary to seek medical care, and must not go to work, even for a **Critical Business**, defined in Section III below.

E. Individuals who are sick or are experiencing flu-like symptoms should get tested for COVID-19, and must self-isolate until their symptoms cease or until they have a negative test result. If an individual has tested positive for COVID-19 and/or has developed symptoms of COVID-19, including early or mild symptoms (such as cough and shortness of breath), they should be in isolation (staying away from others) until they have had no fever for at least seventy-two (72) hours (that is three full days of no fever without the use of medicine that reduces fevers), other symptoms have improved (such as cough or shortness of breath), and at least ten (10) days have passed since symptoms first appeared. Coloradans who are sick and receive negative COVID-19 test results should continue to stay home while they are sick and should consult with their healthcare provider about the need for additional testing and the appropriate time to resume normal activities.

F. Governmental and other entities are strongly urged to make shelter available to people experiencing homelessness as soon as possible and to the maximum extent practicable, and are authorized to take all reasonable steps necessary to provide non-congregate sheltering along with necessary support services to members of the public in their jurisdiction as necessary to protect all members of the community. People experiencing homelessness are urged to protect their health and safety by complying with **Social Distancing Requirements** at all times.

G. Individuals are encouraged to limit travel to **Necessary Travel**, defined in Section III below, including but not limited to, travel by automobile or public transit. People must use public transit only for purposes of performing **Necessary Activities** or to travel to and from work to operate **Businesses** or maintain **Critical Governmental Functions** as authorized in Section II of this Order. People riding on public transit must comply with **Social Distancing Requirements** to the greatest extent feasible.

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H. Activities that are done with 10 or fewer individuals, following **Social Distancing Requirements** for non-household members are authorized. Individuals may participate in local and personal recreation in outside public spaces, as an authorized **Necessary Activity**, in groups no larger than 10 and practicing social distancing maintaining 6 feet between participants. Travel should occur within an individual's local community or as necessary to access outdoor recreation areas. If travelling outside their community, Coloradans are urged to honor all restrictions in place at their destination and avoid travel to counties or municipalities that issue travel restrictions. Local authorities have the discretion to close recreation as needed.

1. Private campgrounds may open for use. Campground operators must regularly clean and disinfect all common areas, such as bathrooms, in accordance with the [CDPHE Cleaning Guidance](#). Group facilities, pavilions, cabins, and yurts remain closed. Campsites must be a minimum of 6 feet apart, and should only be available by reservation. Campground operators must post signs to remind guests of physical distancing requirements, and limit visitors in campground offices to maintain such distancing.

2. Effective June 4, 2020, the following personal recreation activities are permitted:

a. Playgrounds and outdoor sports facilities, such as tennis and pickleball courts, may be open for use for no more than 25 people at a time. High touch areas should be cleaned and disinfected frequently.

b. Outdoor swimming pools may open at 50% capacity, limited to no more than 50 people. Frequently touched surfaces, shared objects, and bathrooms should be cleaned and disinfected every hour.

c. Organized recreational youth or adult league sports may resume activities with no more than 25 players outdoors or 10 players indoors. Parents may attend youth sports activities but must remain 6 feet apart from non-household members. Spectators are strongly discouraged for adult sports. The sports league must retain records of who played in case later disease outbreak investigations become necessary.

d. Gyms, recreation centers and indoor pools may open at 25% capacity, not to exceed 50 people, whichever is less, per room, maintaining 6 feet distancing. Sharing of equipment is discouraged, and equipment must be cleaned and disinfected between uses. Restrooms and showers are open, while lockers remain closed.

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e. Competitive events such as races and endurance events are permitted as long as 6 foot distancing and limitations on group size can be maintained. This includes implementing, including implementation of staggered start times and making efforts to prevent gatherings at starts and finishings, so that no more than 10 people are gathered at a time.

3. Effective June 4, 2020, the following outdoor recreation activities are permitted if authorized within the local jurisdiction and conducted in accordance with the jurisdiction's policies, the requirements below, and the requirements in **Appendix K** of this Order:

- a. Non-guided recreation in groups no larger than 10;
- b. Non-guided equipment rentals, subject to compliance with the retail requirements in **Appendix A** of this Order;
- c. Guide services for fishing, hunting, biking, horseback riding, canoeing, kayaking, stand up paddle boarding, ATV tours, and climbing are permitted in groups no larger than 10;
- d. River outfitters, rafting, or Jeep Tours in groups of up to 2 households in a boat or jeep only in groups of no more than 10;
- e. Developed hot springs may operate in accordance with the outdoor pools requirements in Section I.H.2.b of this Order;
- f. Outdoor recreation activities at ski resorts (mountain biking, hiking, climbing walls, mountain coasters, ropes courses, adventure parks, zip lines, etc) if the local public health agency has reviewed and approved the resort's plans;
- g. Zip lines, ropes courses, outdoor artificial climbing walls, or outdoor sports adventure centers not affiliated with ski resorts if the local public health agency has reviewed and approved the resort's plans;
- h. Scenic trains if every local public health agency in each jurisdiction through which the train operates has approved the train's plans; and
- i. Trail and conservation crews no larger than 10.

J. Due to ongoing concerns regarding disease transmission in larger groups settings that could result in disease outbreaks, the following activities are not authorized to occur:

1. Gatherings or events of more than 10 people that are not otherwise authorized in this Order;

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2. Adult and youth sports tournaments that attract crowds or travelers;
3. Rodeos, fairs, festivals, and parades;
4. Receptions for more than 10 people; and
5. Car, motorcycle or horse races unless there are no spectators and race personnel maintain 6 feet distancing as much as possible; and
6. Sporting events except for recreational sports leagues as authorized in Section I.H.2.c of this Order.

K. Life rites, such as wedding ceremonies, graduation ceremonies and funerals, and other religious rites are authorized at 50% capacity not to exceed 50 people indoors, with strict compliance with **Social Distancing Requirements** for employees and any attendees of services. For outdoor rites, individuals must maintain 6 feet distance between non-household members and work with the appropriate local authority to obtain approval for the maximum number of individuals who may attend in the designated outdoor space. Only the ceremony or rite itself is included in this authorization, receptions or parties associated with life rites are not included in this authorization. Life rites should follow the guidance for houses of worship found [here](#).

II. Business Requirements

Any business or activity not addressed in **Executive Order D 2020 091**, this Order or corresponding interpretive guidance found [here](#) may operate with 10 or fewer individuals in accordance with the requirements in Section II.I of this Order.

A. The following places of public accommodation remain closed to ingress, egress, use, and occupancy by members of the public:

1. Bars, taverns, brew pubs, breweries, microbreweries, distillery pubs, wineries, tasting rooms, special licensees, clubs, and other places of public accommodation offering alcoholic beverages for on-premises consumption unless the establishment ensures access to food from a licensed retail food establishment for on-premise consumption;
2. Cigar bars;
3. Movie and performance theaters except for drive in movie theaters, opera houses, concert halls, and music halls; and
4. Casinos, amusement parks and arcades.

These restrictions do not apply to any of the following:

1. Room service in hotels;
2. Health care facilities, residential care facilities, congregate care facilities, and juvenile justice facilities;
3. Crisis shelters or similar institutions;
4. Airport concessionaires;

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5. Institutions of higher education offering dining hall services located in or adjacent to campus dormitories that are accessed through student, staff, faculty, or campus associated identification, as well as grab and go food services within these institutions, while exercising social distancing measures of at least six feet between individuals; and
6. Any emergency facilities necessary for the response to these events.

B. All **Critical Businesses** and **Critical Government Functions**, as defined in Section III below, may continue to operate. **Critical Businesses** must comply with **Social Distancing Requirements** at all times, adopt work from home or tele-work policies for any operations that can be done remotely, and implement other strategies, such as staggered schedules or re-designing workplaces, to create more distance between workers unless doing so would make it impossible to carry out critical functions. **Critical Businesses** that serve the public such as grocery stores and other **Critical Retail** shall comply with **Social Distancing Requirements** at all times including, but not limited to, when any customers are standing in line. **Critical Business** and **Critical Government Functions** shall continue to promote telecommuting to the greatest extent possible.

C. All places of public accommodation subject to Public Health Order 20-22, as amended, that offer food and beverages may continue to offer food and beverage using delivery service, window service, walk-up service, drive-through service, drive-up service, curbside delivery or any manner set forth in that PHO and in accordance with mandatory **Social Distancing Requirements**, except as prohibited or limited by **Executive Orders D 2020 091** or this Order. These entities include restaurants, food courts, cafes, coffeehouses, and other similar places of public accommodation offering food or beverage for on-premises consumption as or from a licensed retail food establishment, referred to in this Order as Restaurants; and bars, taverns, brew pubs, breweries, microbreweries, distillery pubs, wineries, tasting rooms, special licensees, clubs, and other places of public accommodation serving alcoholic beverages and, if serving food, only snacks and not kitchen-prepared meals, referred to in this Order as Bars.

1. Effective May 27, 2020, Restaurants may open to in-person dining at 50% of the indoor posted occupancy code limit, not to exceed 50 people, whichever is less. Tables or groups must be limited to no more than 8 people and be spaced so that patrons are a minimum of 6 feet apart. Restaurants may also use any existing, licensed outdoor space for in-person dining with the same group limit of 8 and minimum spacing of 6 feet apart. Restaurants must have or obtain approval from their local government's permitting, building and fire code oversight agency for any new outdoor dining space prior to use. Additional requirements for Restaurants are contained in **Appendix I**.

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D. All **Non-Critical Retail**, as defined in Section III below, may operate and offer goods through delivery service, window service, walk-up service, drive-through service, drive-up service, curbside delivery, or any other manner allowing for strict compliance with mandatory social distancing requirements, similar to the requirements for **Critical Retail**. Additional requirements for **Critical** and **Non-Critical Retail** are contained in **Appendix A** of this Order.

E. All **Field Services**, including real estate, may resume operations, in accordance with the requirements of this Order including **Appendix B**. Real estate includes in-person real estate showings and marketing services which must adhere to **Social Distancing Requirements** with cleaning and disinfection between each showing, but may not hold open houses.

F. Other health care services not covered by **Executive Order 20 045 Voluntary or Elective Surgeries Or Procedures** and extended by **Executive Order D 2020 080**, in certain limited healthcare settings may resume if done in accordance with the requirements of **Appendix E**.

G. Effective May 1, 2020, **Non-Critical Retail** and limited **Personal Services** may resume in-person services if they meet the requirements in Section II.I below and the additional requirements outlined for these services in **Appendices A** and **D** of this Order.

H. Effective May 4, 2020, the following businesses may reopen in accordance with the requirements of this Order:

1. **Non-Critical Office-Based Businesses** operating in an office and not a production environment, as defined in Section III below, may allow up to fifty (50) percent of their employees to conduct in-person work that takes place outside a private residence in accordance with the requirements in Section II.I below and the additional requirements outlined in **Appendix C**.

2. **Non-Critical Manufacturing** operating in a production environment with no more than ten (10) employees that comply with the requirements in Section II.I below and the additional requirements in **Appendix H**.

I. All Business and Government Functions. All Businesses and Government Functions shall all follow the protocols below:

1. Employers and sole proprietors shall take all of the following measures within the workplace to minimize disease transmission, in accord with the [CDPHE Guidance](#):

- a. deputize a workplace coordinator(s) charged with addressing COVID-19 issues;
- b. maintain 6 foot separation between employees and discourage

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shared spaces;

- c. [clean and disinfect](#) all high touch areas;
- d. post signage for employees and customers on good hygiene;
- e. ensure proper ventilation;
- f. avoid gatherings (meetings, waiting rooms, etc) of more than 10 people or provide sufficient spaces where appropriate distancing can be maintained if larger gatherings are required by law, such as for some government functions like trials;
- g. implement symptom monitoring protocols, conduct daily temperature checks and monitor symptoms in employees at the worksite to the greatest extent possible, or if not practicable, through employee self-assessment at home prior to coming to the worksite. A sample form can be found [here](#). If an employee reports any symptoms, refer symptomatic employees to the [CDPHE Symptom Tracker](#) and take all of the following steps:
 - 1. send employee home immediately;
 - 2. increase cleaning in your facility and require social distancing of staff at least 6 feet apart from one another;
 - 3. exclude employee until they are fever-free, without medication, for 72 hours and 10 days have passed since their first symptom; and
 - 4. if two or more employees have these symptoms, consult [CDPHE's outbreak guidance](#), contact your local health department and cooperate in any disease outbreak investigations; and
- h. eliminate or regularly [clean and disinfect](#) any items in common spaces, such as break rooms, that are shared between individuals, such as condiments, coffee makers, vending machines.

2. Employers shall take all of the following measures regarding employees to minimize disease transmission:

- a. require employees to stay home when showing any symptoms or signs of sickness, which include fever or chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, and diarrhea and connect employees to company or state benefits providers;
- b. provide work accommodations for people who are at risk of severe illness from COVID-19 who remain subject to **Stay at Home** advisement, prioritizing telecommuting, as people who are at risk for severe illness

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from COVID-19 shall not be compelled to go to work during the pendency of this pandemic emergency;

- c. provide to the greatest extent possible flexible or remote scheduling for employees who may have child or elder care obligations, or who live with a person who still needs to observe **Stay at Home** due to underlying condition, age, or other factor;
- d. encourage and enable remote work whenever possible;
- e. encourage breaks to wash hands or use hand sanitizer;
- f. phase shift and breaks to reduce density; and
- g. provide appropriate protective gear like [gloves, masks, and face coverings](#) as defined by [OSHA industry standards](#).

3. Employers and sole proprietors shall implement the following measures regarding customers to minimize disease transmission:

- a. create whenever possible special hours for people who are at risk of severe illness from COVID-19 only;
- b. encourage 6 foot distancing inside of the business for all patrons;
- c. encourage customer use of protection like gloves and face coverings;
- d. provide hand sanitizer at the entrances to the greatest extent possible; and
- e. use contactless payment solutions, no touch trash cans, etc. whenever possible.

4. Employers with over fifty (50) employees in any one location shall, in addition to the above requirements, implement the following protocols:

- a. implement employee screening systems that follow the requirements of Section II.I.1.g above in one of the following ways:
 - i. Set up stations at the worksite for symptom screening and temperature checks; or
 - ii. Create a business policy that requires at-home employee self-screening each work day and reporting of the results to the employer prior to entering the worksite;
- b. close common areas to disallow gatherings of employees;
- c. implement mandatory cleaning and disinfection protocols; and
- d. require mandatory adherence to **Social Distancing Requirements**.

J. Work Accommodations. Employers must provide reasonable work accommodations for people who are at risk of severe illness from COVID-19 who are still under

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the **Stay at Home** advisement, such as telecommuting. Employers are encouraged to provide reasonable work accommodations for individuals who reside with or are caring for people who are at risk of severe illness from COVID-19, or facing child care needs while schools remain closed.

K. Children's Day Camps and Youth Sports Camps. Effective June 1, 2020, children's day camps, youth sports camps and exempt single skill-building youth camps may open in accordance with the requirements in **Appendix J** of this Order. Residential camps are not authorized to open at this time.

L. Specific Industry Requirements. Additional requirements for specific industries are included in the following Appendices to this Order:

1. Appendix A: Critical and Non-Critical Retail Requirements
2. Appendix B: Field Services
3. Appendix C: Non-Critical Office-Based Businesses
4. Appendix D: Personal Services
5. Appendix E: Limited Healthcare Settings
6. Appendix H: Non-Critical Manufacturing
7. Appendix I: Restaurants
8. Appendix J: Children's Day Camps, Youth Sports Day Camps and Exempt Single Skill-Building Youth Camps
9. Appendix K: Outdoor Recreation

M. Houses of Worship. Houses of worship are encouraged to implement electronic platforms to conduct services whenever possible or to conduct more frequent services of 10 people or less to allow for compliance with **Social Distancing Requirements**. Effective June 4, 2020, houses of worship may open to 50% of the posted occupancy limit indoors not to exceed 50 people, whichever is less, per room, while meeting the 6 feet distancing requirements in every direction between non-household members. For outdoor worship services, a house of worship must maintain 6 feet distance between non-household members and work with the appropriate local authority to obtain approval for the maximum number of individuals who may attend in the designated outdoor space. In addition to meeting the requirements of Section II.I of this Order, houses of worship shall also meet the following requirements:

1. Face coverings are strongly encouraged to be worn by staff, volunteers and congregants while on the premises of the house of worship, except for children 2 years old and under, those with trouble breathing, or those unable to remove a mask without assistance.
2. Houses of worship should follow the [Colorado Department of Health and Environment Cleaning Guidance](#), as well as the [CDC guidelines for Cleaning and](#)

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Disinfecting Your Facility in preparing their buildings prior to, during, and following any gathering. Restrooms and the worship space, particularly any metal or plastic on chairs, and all high touch surfaces or shared objects must be cleaned and disinfected between services.

III. Definitions

A. Necessary Activities. For purposes of this PHO, individuals are encouraged to only leave their Residence to perform any of the following **Necessary Activities**, provided they comply at all times and to the greatest extent possible with **Social Distancing Requirements** below. People at risk of severe illness from COVID-19 are urged not to leave their residence except as necessary to receive medical care. People who are sick must not leave their residence except as necessary to receive medical care, and must not go to work, even for a **Critical Business**. **Necessary Activities** include:

1. Engaging in activities or perform tasks essential to their health and safety, or to the health and safety of their family or household members, including, but not limited to, pets and livestock, such as, by way of example only and without limitation, obtaining medical supplies, walking your dog, feeding barnyard animals, obtaining durable medical equipment, obtaining medication, visiting a healthcare professional, or obtaining supplies they need to work from home.
2. Obtaining necessary services or supplies for themselves and their family or household members, or to deliver those services or supplies to others, such as, by way of example only and without limitation, food, pet supply, other household consumer products, and products or equipment necessary to maintain the safety, sanitation, and essential operation of a Residence.
3. Engaging in outdoor activity, such as, by way of example and without limitation, walking, hiking, nordic skiing, snowshoeing, biking or running. For purposes of outdoor activity, State parks will remain open to the public who live in the vicinity to engage in walking, hiking, biking, running, camping and similar outdoor activities, basketball and tennis courts may be open for use. For other parks, check with the local jurisdiction and follow any requirements for that jurisdiction. For ski resorts, the local public health agency must approve the ski resort's plan prior to opening. Additionally, the permitted outdoor activities in this PHO do not include activities that would violate the **Social Distancing Requirements** defined in Section III, below.
4. Performing work providing for businesses, government entities, and industries authorized Section II of this Order, or to otherwise carry out activities permitted in this Order.
5. Caring for a family member, a vulnerable person, or pet in another household, or to care for livestock kept at a location other than an individual's home.

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B. Necessary Travel. For purposes of this Order, travel is Necessary for any of the following purposes: (1) providing or accessing **Necessary Activities, Minimum Basic Operations, Critical Government Functions, and Critical Businesses**, and other businesses or industries authorized in Section II of this Order; (2) receiving materials for distance learning, for receiving meals, and any other related services from educational institutions; (3) returning to a place of residence from outside the jurisdiction; (4) travel required by law enforcement or court order; (5) travel to transport children between separate households pursuant to a parenting plan or other agreement governing parental responsibilities; (6) non-residents returning to their place of residence; (7) moving to a new residence, including individuals whose Residence is unsafe due to domestic violence concerns.

C. Critical Business. Any business, including any for profit or non-profit, regardless of its corporate structure, engaged primarily in any of the commercial, manufacturing, or service activities listed in **Appendix F**, must continue to comply with the guidance and directives for maintaining a clean and safe work environment issued by the Colorado Department of Public Health and Environment (CDPHE) and any applicable local health department. **Critical Businesses** must comply with **Social Distancing Requirements** and all PHOs currently in effect to the greatest extent possible and will be held accountable for doing so. A list of Critical Businesses is contained in **Appendix F** to this Order.

D. Critical Government Functions. The provision, operation and support of the following state and local government functions shall continue:

1. Public safety (police stations, fire and rescue stations, correctional institutions, emergency vehicle and equipment storage, and, emergency operation centers)
2. Emergency response
3. Judicial branch operations including state and municipal courts, including attorneys, experts, witnesses, parties, and any personnel necessary for trials, court appearances, or other court business. The Judicial branch is encouraged to make remote participation available to the greatest extent possible.
4. The Colorado General Assembly, legislative bodies of municipal governments, and executive branch functions
5. Emergency medical (hospitals, ambulance service centers, urgent care centers having emergency treatment functions, and non-ambulatory surgical structures but excluding clinics, doctors offices, and non-urgent care medical structures that do not provide these functions)
6. Designated emergency shelters

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7. Communications (main hubs for telephone, broadcasting equipment for cable systems, satellite dish systems, cellular systems, television, radio, and other emergency warning systems, but excluding towers, poles, lines, cables, and conduits)

8. Public utility plant facilities for generation and distribution (drinking water and wastewater infrastructure, hubs, treatment plants, substations and pumping stations for power and gas, but not including towers, poles, power lines, and oil and gas buried pipelines)

9. Transportation. All public and private airports, airlines, taxis, transportation network companies (such as Uber and Lyft), vehicle rental services, paratransit, and other private, public, and commercial transportation and logistics providers necessary for **Necessary Activities**

10. Transportation infrastructure (aviation control towers, air traffic control centers, and emergency equipment aircraft hangars), critical road construction and maintenance

11. Hazardous material safety

12. Services to at-risk populations and people who are at risk of severe illness from COVID-19

13. Activities related to federal, state, and local elections, including any required acts of a political party, provided **Social Distancing Requirements** are observed to the greatest extent possible

14. Any government service, state or local, required for the public health and safety, government functionality, or vital to restoring normal services

15. Election operations, including but not limited to election judges, signature gatherers/circulators, campaign workers and volunteers

E. Field Services means a service that is being provided out in the field as opposed to a company property, including third party private properties, such as a third party household.

F. Gym means a building or room used for indoor sports or exercise, such as fitness, dance, exercise or group classes, exercise studios and centers, recreation centers, bowling alleys, pools, and other indoor athletic facilities.

G. Horse track means a licensed race track, which is any premises licensed pursuant to this Article 32 of Title 44 of the Colorado Revised Statutes for the conduct of racing. Sections 44-32-102(2)(a), (2)(b), (3), (8) & (24), C.R.S.

H. Minimum Basic Operations. The minimum necessary activities to (1) maintain the value of the business's inventory, ensure security, process payroll and employee benefits, or for related functions; or (2) facilitate employees of the business being able to continue to work

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remotely from their residences are allowable pursuant to this Order; continue filling online product orders and to process customer orders remotely. Any business supporting **Minimum Basic Operations** must comply at all times with **Social Distancing Requirements**.

I. Non-Critical Office-Based Business means any commercial business that is conducted in an office and not a production environment and is not included in the list of **Critical Businesses** in **Appendix F**.

J. Non-Critical Retail means any retail service that is not included in the list of critical retail services in **Appendix F**. Examples of **Non-Critical Retail** include retailers of clothing, home goods, cell phone stores, mattresses, appliances, thrift shops, apothecaries, vape and tobacco shops, craft, hobby and fabric stores, fishing tackle retailers, sporting goods, boutiques, etc.

K. Limited Healthcare Settings means those locations where certain healthcare services are provided, including acupuncture (not related to personal services), athletic training (not related to personal services), audiology services, services by hearing aid providers, chiropractic care, massage therapy (not related to personal services), naturopathic care, occupational therapy services, physical therapy, and speech language pathology services. These individual services may only be performed with 10 or fewer people in a common business space at a maximum of 50% occupancy for the location, whichever is less, including both employees and patients, e.g. 5 chiropractors providing services to 5 customers, with **Social Distancing Requirements** in place of 6 feet distancing between customers receiving services. Employees must wear medical grade masks at all times, and patients must wear at least a [cloth face covering](#) at all times. Services provided in **Limited Healthcare Settings** that are ordered by a medical, dental or veterinary practitioner, are subject to the requirements of Reference PHO 20-29; otherwise, the services are subject to the requirements of PHO 20-28.

L. Personal Services means services and products that are not necessary to maintain an individual's health or safety, or the sanitation or essential operation of a business or residence. **Personal Services** include, but are not limited to, pastoral services except as specified in **Appendix F**, personal training, dog grooming, or body art and also applies to noncritical professionals regulated by the Division of Professions and Occupations, within the Department of Regulatory Agencies (DORA) including but not limited to services provided by personal beauty professionals such as hairstylists, barbers, cosmetologists, estheticians, nail technicians, as well as massage therapists, whose work requires these professionals to be less than six feet from the person for whom the services are being provided. Massage therapy services ordered by a healthcare professional should consult **Executive Order D 2020 027**. These individual services may only be performed with 10 or fewer people in a common business space at a maximum of

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50% occupancy for the location, whichever is less, including both employees and customers, e.g. 5 hairstylists providing services to 5 customers, with **Social Distancing Requirements** of at least 6 feet distancing between different customers receiving services. Both employees and customers must wear at least a cloth face covering or a medical grade mask at all times. Only services that can be performed without the customer removing their mask are permitted.

1. Effective June 4, 2020, individual personal services may be performed at 50% of the posted occupancy limit not to exceed 50 people in a common business space.

M. “Safer at Home” means individuals stay in your place of residence as much as possible, and avoid unnecessary social interactions.

N. Social Distancing Requirements. To reduce the risk of disease transmission, individuals shall maintain at least a six-foot distance from other individuals, wash hands with soap and water for at least twenty seconds as frequently as possible or using hand sanitizer, cover coughs or sneezes (into the sleeve or elbow, not hands), regularly clean high-touch surfaces, and not shake hands.

O. Stay at Home means to stay in your place of residence, which includes hotels, motels, and shared rental facilities, and not leave unless necessary to provide, support, perform, or operate **Necessary Activities, Minimum Basic Operations, Critical Government Functions, and Critical Businesses**.

P. “Vulnerable Individual”, also known as an individual at risk of severe illness from COVID-19, means:

1. Individuals who are 65 years and older;
2. Individuals with chronic lung disease or moderate to severe asthma;
3. Individuals who have serious heart conditions;
4. Individuals who are immunocompromised;
5. Pregnant women; and
6. Individuals determined to be high risk by a licensed healthcare provider.

IV. Postsecondary Institutions. Programs and courses at postsecondary institutions that cannot be conducted remotely, generally due to equipment requirements, may be conducted through limited in-person instruction. Institutions that wish to resume providing in-person instruction must inform the Colorado Department of Higher Education and ensure that **Social**

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Distancing Requirements are strictly followed. Additionally, students are allowed to opt out of the in-person instruction; such students will be treated no differently than students in all other courses that have ceased in-person instruction due to the COVID-19 situation.

V. Variance Requests. Any Colorado county may request a variance from the Colorado Department of Public Health and Environment authorizing implementation of an alternative COVID-19 suppression plan that differs from part or all the requirements of **Executive Order D 2020 091** or this Order. The variance request must include an alternative COVID-19 suppression plan endorsed by the local public health agency and adopted by the county commissioners or other county-level governing body, in addition to verification from local hospitals that they have the capacity to serve all people needing their care. Further guidance on variance requests is contained in **Appendix G**.

VI. Enforcement

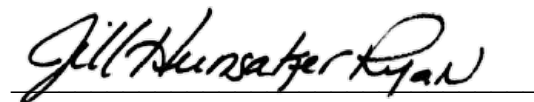
This Order will be enforced by all appropriate legal means. Local authorities are encouraged to determine the best course of action to encourage maximum compliance. Failure to comply with this order could result in penalties, including jail time, and fines, and may also be subject to discipline on a professional license based upon the applicable practice act.

VII. Severability

If any provision of this Order or the application thereof to any person or circumstance is held to be invalid, the reminder of the Order, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Order are severable.

VIII. Duration

This Order shall become effective on Friday June 5, 2020 and will expire 30 days from June 1, 2020, unless extended, rescinded, superseded, or amended in writing.



Jill Hunsaker Ryan, MPH
Executive Director

June 5, 2020

Date

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Appendix A. Critical and Non-Critical Retail Requirements

Appendix B. Field Services

Appendix C: Non-Critical Office-Based Businesses

Appendix D: Personal Services

Appendix E: Limited Healthcare Settings

Appendix F: Critical Businesses List

Appendix G: County Variance Requests

Appendix H: Non-Critical Manufacturing

Appendix I: Restaurants

Appendix J: Children's Day Camps, Youth Sports Day Camps And Exempt Single Skill-Building Youth Camps

Appendix K: Outdoor Recreation

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APPENDIX A. CRITICAL AND NON-CRITICAL RETAIL REQUIREMENTS

I. Effective April 27, 2020, in addition to meeting the requirements of this Order, and specifically Section II.I, **Non-Critical Retail** may operate and offer goods through delivery service, window service, walk-up service, drive-through service, drive-up service, curbside delivery, or any other manner allowing for strict compliance with mandatory **Social Distancing Requirements**, except as prohibited or limited by this Order. Restricting interactions to curbside pick-up or delivery minimizes touch. **Non-Critical Retailers** are encouraged to continue curbside pick-up or delivery for longer term service wherever possible. **Critical and Non-Critical Retailers** must implement the requirements in Section II.I, in addition to the specific requirements in this Appendix. Indoor malls are addressed separately in Section III of this **Appendix**. Libraries, both public and private, are limited to providing window service, walk-up service, drive-through service, or curbside delivery.

A. **Critical and Non-Critical Retail** must implement the following measures within the workplace to minimize disease transmission:

1. Elevate and increase frequency of [cleaning practices](#), including cleaning and disinfection of high touch areas.
2. Restrict return policy to only items that can be properly sanitized prior to re-selling.
3. Post signage for employees and customers on good hygiene and other sanitation practices.

B. **Critical and Non-Critical Retail** must implement the following measures regarding employees to minimize disease transmission:

1. Provide guidance and encouragement on maintaining 6 foot distancing between both employees and employees and customers.
2. Provide appropriate face coverings and gloves to all employees whenever possible, and also allow employees who can to provide their own appropriate face coverings and gloves for work activities. Employees without face coverings shall not perform tasks that require engagement with the public or with other coworkers.
3. Encourage frequent breaks to allow employees to wash or sanitize their hands.
4. Require employees to stay home when showing any symptoms or signs of sickness.

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5. Provide personal protective equipment (PPE) for employees who are managing deliveries, returns, etc.

C. Employers must implement the following measures regarding customers to minimize disease transmission:

1. Require 6 foot distancing measures wherever possible, such as marked space in pick up lines.

II. Effective May 1, 2020, **Non-Critical Retail** may open at fifty percent (50%) capacity for in-person services if the business can demonstrate compliance with all of the following requirements:

A. **Critical and Non-Critical Retail** must continue implementing the measures within the workplace listed in Section I.A of this **Appendix A**, and in addition:

1. maintain 6 foot distancing between patrons and employees;
2. effectively symptom monitor employees as listed in Section II.I;
3. provide face coverings, and gloves as necessary and appropriate, to employees;
4. ensure ability to adequately clean and disinfect both back-room and retail spaces; and
5. provide dedicated, in-store hours for vulnerable or at-risk individuals.

B. **Critical and Non-Critical Retail** must implement the measures regarding employees listed in Section I.B of this **Appendix A**.

C. **Critical and Non-Critical Retail** must implement the measures to minimize disease transmission for customers listed in Section I.C of this **Appendix A** in addition to the following measures:

1. limit the number of customers on the premises as needed to make 6 foot distancing between customers attainable;
2. provide decals and demarcation for waiting area in lines that meet social distancing criteria;
3. create signage encouraging vulnerable and at-risk individuals to refrain from shopping outside of dedicated hours set aside for those who are more vulnerable or at-risk;
4. create signage to encourage the use of masks and gloves by customers while on the premises; and

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5. provide hand sanitizer and wipes at entrances and other high-traffic locations to the greatest extent possible.

III. Indoor Malls. Indoor malls must not open to the public for entry. Retailers operating in indoor malls that have their own exterior entrance from the outside may operate as all other **Non-Critical Retail** in accordance with this **Appendix**. Retailers and service providers operating in an indoor mall that do not have their own exterior entrance from the outside remain closed; however, these vendors may establish delivery service, including curbside delivery, in strict compliance with mandatory **Social Distancing Requirements**.

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APPENDIX B: FIELD SERVICES

I. Effective April 27, 2020, **Field Services** may resume if the business can demonstrate compliance with the requirements in Section II.I of this Order, in addition to the following requirements specific to **Field Services**:

A. Employers must implement the following measures regarding employees to minimize disease transmission:

1. adhere to all general rules or guidance on social gathering limitations when working out of the office;
2. implement procedures for field-based employees to monitor for symptoms and report-in to management daily on health status.
3. comply with the **Social Distancing Requirements** and maintain a 6 foot distance between employees and from their customers;
4. provide gloves and masks for any customer interactions or work being done in third-party home or office spaces;
5. When scheduling or conducting field services, either the employer or an employee must inquire whether third-party homes have individuals symptomatic for COVID-19 or have been in contact with known positive cases, and exercise caution when inside the home and interacting with anyone in the home if they do;
6. maintain a detailed log of customer interactions to enable contact tracing if it becomes necessary. The log should include name, date, and location of contact, as well as the contact's phone number and/or email address;
7. require that all tools or equipment be sanitized after each customer visit;.
8. prioritize work accommodations for individuals at risk of severe illness from COVID-19, prioritizing telecommuting;
9. provide guidance and encouragement on personal sanitation, including frequently washing hands. This guidance should include all of the following:
 - a. frequently and thoroughly wash your hands with soap and water for at least 20 seconds. If soap and water are not available, use hand sanitizer with at least 60% alcohol;
 - b. cover coughs and sneezes with a tissue, then throw the tissue in the trash, or use your inner elbow or sleeve;
 - c. avoid touching your eyes, nose, and mouth with unwashed hands;
 - d. stay home if you're sick, and keep your children home if they are sick; and
 - e. clean high touch surfaces in your home, and personal items such as cell phones, using regular household products.

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B. Employers must implement the following measures regarding customers to minimize disease transmission:

1. provide estimates, invoices, receipts, and other documentation electronically to negate the need for paper;
2. provide contactless payment options in the field whenever possible;
3. encourage customers to maintain 6 foot distancing from field service employees; and
4. encourage customers to use facial coverings when field services are being conducted.

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APPENDIX C: NON-CRITICAL OFFICE-BASED BUSINESSES

I. Effective May 4, 2020, **Non-Critical Office-based Businesses** may resume at fifty percent (50%) of their in-office occupancy if the business can demonstrate compliance with the requirements of this Order, including Section II.I, and all of the following:

A. Employers must implement the following measures within the workplace to minimize disease transmission:

1. ensure a minimum of 6 feet of space between all desks and workspaces;
2. modify the flow of people traffic to minimize contacts, such as identifying doors for entry or exit only;
3. conduct standard office cleaning with increased frequency and supplement with sanitization of high touch areas, in accord with [CDPHE guidelines](#);
4. provide employees with cleaning and disinfecting products and guidance on daily workspace cleaning routines; and
5. post signage for employees and customers on good hygiene and new office practices.

B. Employers must implement the following measures regarding employees to minimize disease transmission:

1. maintain in-office occupancy at no more than 50% of total by maximizing use of telecommuting and developing in-office rotation schedules;
2. minimize the number of in-person meetings and maintain 6 foot distancing in those meetings;
3. provide guidance and encouragement on maintaining 6 foot distancing and taking breaks to wash hands;
4. require gloves and masks for any customer interactions; and
5. allow telecommuting to the greatest extent possible.

C. Employers must implement the following measures regarding customers to minimize disease transmission:

1. require 6 foot distancing measures wherever possible, such as marked space in check-out lines;
2. encourage customers to use facial coverings when on the business premises;
3. provide hand sanitizer at entrances and other high-traffic locations; and
4. implement hours where service is only provided to individuals at risk of severe illness from COVID-19 if possible.

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APPENDIX D: PERSONAL SERVICES

I. Effective May 1, 2020, **Personal Services** may resume if the business can demonstrate compliance with the requirements of this Order, including Section II.I, and all of the following:

A. Employers and sole proprietors must implement the following measures within the workplace to minimize disease transmission:

1. Employ strict hygiene guidelines and cleaning and disinfection procedures for all contact surfaces and tools, in accordance with [CDPHE Worker and Customer Protection Guidelines for Non-Healthcare Industries](#);
2. Ensure a minimum of 6 feet of separation between clients and customers, including services for pets, when not directly performing service;
3. Post signage for employees and customers on good hygiene and safety measures being taken;
4. Minimize in-home and in-facility services with remote alternatives whenever possible, such as drive-by services or virtual meetings; and
5. Through June 3, 2020, limit individuals, including employees and customers, to no more than 10 people in a common business space at a maximum of 50% occupancy. Effective June 4, 2020, limit individuals including employees and customers, to no more than 50 people in a common business space at a maximum of 50% occupancy. All businesses offering services through employees or lessees in individual rooms must comply with the requirements of this Order for each room.

B. Employers must implement the following measures regarding employees to minimize disease transmission:

1. Services with close personal contact, such as beauty professionals, massage, etc., must implement the following:
 - a. wear a face covering and gloves at all times, or, if wearing gloves is not feasible or appropriate, meticulous hand washing;
 - c. change gloves and wash hands between every individual or pet served;
 - d. clean and disinfect all shared equipment and tools between every individual or pet served; and
 - e. maintain a detailed log of customer interactions to enable contact tracing if it becomes necessary. The log should include name, date, details of services performed, and location of contact, as well as the contact's phone number and/or email address.

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2. Personal services with low personal contact, such as movers or repair services, must implement the following:
 - a. maintain a minimum of 6 feet of separation between customers and adhere to social gathering limits of no more than 10 people. For real estate work, open houses are prohibited;
 - b. require face coverings and, if feasible, gloves for any customer interactions; and
 - c. provide guidance on strict hygiene precautions to employees.

C. Personal Services must implement the following measures regarding customers to minimize disease transmission:

1. provide customer services by appointment only, do not allow walk-ins or waiting for an appointment, and limit all group classes of any kind for individuals or for pets, pet training classes, or other activities associated with picking up pets to no more than 10 customers at a time and all following **Social Distancing Requirements**;
2. require customers to wear face coverings, except for personal training in a pool; if a customer does not have a mask, a "disposable mask" could be provided;
3. conduct symptoms check for all customers of services with close personal contact and decline to provide services to anyone who has symptoms. A sample form can be found [here](#); and
4. provide contactless payment options whenever possible.

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APPENDIX E: LIMITED HEALTHCARE SETTINGS

I. Effective April 27, 2020, **Limited Healthcare Settings** may resume if the healthcare entity can demonstrate compliance with the requirements of this Order, including Section II.I and may restart voluntary and elective surgeries and procedures in limited healthcare facilities and offices with required personal protective equipment (PPE) in accord with the priorities, requirements, and specific criteria below.

A. Employers and sole proprietors of **Limited Healthcare Settings** must implement the following measures within the overall workplace, including administrative and front office operations, to minimize disease transmission:

1. The practice must have access to adequate PPE in order to sustain recommended PPE use for its workforce for two weeks without the need for emergency PPE-conserving measures. If a practice proposes to extend the use of or reuse PPE, it must follow CDC guidance.¹
2. The practice must implement strict infection control policies as recommended by the CDC.²
3. The practice must ensure a minimum of 6 feet of separation between clients and patients, when not directly performing service, with no more than ten (10) people in a common business space at a maximum of 50% occupancy, and all settings offering services in individuals rooms must comply with the requirements of this Order for each room.
4. The practice must post signage for employees and patients on good hygiene and safety measures being taken.
5. The practice must minimize in-home and in-facility services with remote alternatives whenever possible, such as drive-by services or virtual meetings.
6. Practices must maintain a plan to reduce or stop voluntary and elective surgeries and procedures should a surge/resurgence of COVID-19 cases occur in their region.

B. Employers of **Limited Healthcare Settings** must implement the following measures regarding employees to minimize disease transmission:

1. Services with close, direct personal contact must implement the following:
 - a. wear medical grade mask and gloves at all times;
 - b. change gloves and wash hands between every patient;

¹ <https://www.cdc.gov/coronavirus/2019-ncov/hcp/ppe-strategy/index.html>

² <https://www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control.html>

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- c. clean and disinfect all shared equipment and tools between every patient; and
 - d. maintain a detailed log of patient interactions to enable contact tracing if it becomes necessary. The log should include name, date, details of services performed, and location of contact, as well as the contact's phone number
2. Services with low personal contact must implement the following:
 - a. maintain a minimum of six 6 feet of separation between customers and limit to no more than ten (10) people in a common business space at a maximum of 50% occupancy.
 - b. require face coverings and, if feasible, gloves for any customer interactions; and
 - c. provide guidance on strict hygiene precautions to employees.
3. The practice must require all administrative personnel to wear a facemask, that can be cloth if necessary. Masks may be removed when social distancing of at least 6 feet if possible (e.g., after entering a private office). In order to ensure staff can take off their masks for meals and breaks, scheduling and location for meals and breaks should ensure that at least a 6-foot distance can be maintained between staff when staff needs to remove their mask. It is important for healthcare settings to emphasize that hand hygiene is essential to maintaining employee safety, even if staff are wearing masks. If the facemask is touched, adjusted or removed, hand hygiene should be performed.

C. Limited Healthcare Settings must implement the following measures regarding customers to minimize disease transmission:

1. The practice must provide services by appointment only, do not allow walk-ins or waiting for an appointment;
2. The practice must require patients to wear face coverings; if a patient does not have a mask, a "disposable medical mask" could be provided;
3. The practice must conduct symptom checks for all patients, decline to provide services to anyone who has symptoms, and refer them to their primary care physician. A sample form can be found [here](#); and
4. The practice must provide contactless payment options whenever possible;
5. The practice must follow social distancing protocols of maintaining at least a 6-foot distance between individuals wherever possible such as in waiting rooms and other small spaces, and should use physical barriers within patient care areas when possible.
6. The practice must appropriately schedule patients, so that providers have sufficient time to change PPE and ensure rooms and equipment can be cleaned and disinfected between each patient.

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7. The practice should continue to maximize the use of telehealth and virtual office or clinic visits.
8. The practice should use virtual waiting rooms when possible, with patients who are able to wait in their cars not entering the office until they can be moved immediately to an exam room.
9. The practice should implement source control for everyone entering the office or clinic, including requiring all patients and visitors to wear a cloth mask when entering any healthcare building, and if they arrive without a mask, one should be provided.

D. As best practice, it is recommended that once voluntary and elective surgeries and procedures resume, **Limited Healthcare Settings** reassess their operations every two weeks, in order to ensure:

1. All of the above approaches and criteria are being met;
2. Procedures are prioritized based on whether their continued delay will have an adverse health outcome.
 - a. Voluntary and elective surgeries and procedures should be prioritized based on indication and urgency³;
3. Strong consideration is given to the balance of risks versus benefits for patients in higher-risk groups such as those over age 65 and those with compromised immune systems or lung and heart function;
4. All patients are pre-screened for COVID-19 risk factors and symptoms prior to delivering care, via telehealth when applicable; and
5. Compliance with the guidance and directives for maintaining a clean and safe work environment issued by the CDPHE and any applicable local health department for critical businesses is maintained, including compliance with **Social Distancing Requirements** and all PHOs currently in effect to the greatest extent possible.

³ Urgent and emergent care should continue in accordance with OHA and CMS guidance.

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APPENDIX F: CRITICAL BUSINESSES

Critical Business. Any business, including any for profit or non-profit, regardless of its corporate structure, engaged primarily in any of the commercial, manufacturing, or service activities listed below, may continue to operate as normal. **Critical Businesses** must comply with the guidance and directives for maintaining a clean and safe work environment issued by the Colorado Department of Public Health and Environment (CDPHE) and any applicable local health department. **Critical Businesses** must comply with **Social Distancing Requirements** and all PHOs currently in effect to the greatest extent possible and will be held accountable for doing so. **Critical Businesses** do NOT include health clubs as defined in C.R.S. § 6-1-102(4.6), fitness and exercise gyms, and similar facilities, or any of the other businesses required to close by PHO 20-22.

“Critical Business” means:

1. Healthcare Operations, Including:

- Hospitals, clinics, and walk-in health facilities
- Medical and dental care, including ambulatory providers
- Research and laboratory services
- Medical wholesale and distribution
- Home health care companies, workers and aides
- Pharmacies
- Pharmaceutical and biotechnology companies
- Behavioral health care providers
- Veterinary care and livestock services
- Nursing homes, residential health care, or congregate care facilities
- Medical supplies and equipment manufacturers and providers, including durable medical equipment technicians and suppliers
- Blood banks

2. Critical Infrastructure, Including:

- Utilities and electricity, including generation, transmission, distribution and fuel supply
- Road and railways
- Oil and gas extraction, production, refining, storage, transport and distribution
- Public water and wastewater

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- Telecommunications and data centers
- Transportation and infrastructure necessary to support critical businesses
- Hotels, and other places of accommodation
- Businesses and organizations that provide food, shelter, social services, and other necessities of life for economically disadvantaged, persons with access and functional needs, or otherwise needy individuals
- Food and plant cultivation, including farming crops, livestock, food processing and manufacturing, animal feed and feed products, rendering, commodity sales, and any other work critical to the operation of any component of the food supply chain
- Any business that produces products critical or incidental to the construction or operation of the categories of products included in this subsection
- Flight schools

3. Critical Manufacturing, Including:

- Food processing, manufacturing agents, including all foods and beverages
- Chemicals
- Computers and computer components
- Medical equipment, components used in any medical device, supplies or instruments
- Pharmaceuticals
- Sanitary products
- Telecommunications
- Microelectronics/semiconductor
- Agriculture/farms
- Household paper products
- Any business that produces products critical or incidental to the processing, functioning, development, manufacture, packaging, or delivery of any of the categories of products included in this subsection
- Any manufacturing necessary to support a **Critical Business**

4. Critical Retail, Including:

- Grocery stores including all food and beverage stores
- Farm and produce stands
- Gas stations and convenience stores
- Restaurants and bars as authorized in **Appendix I** of this Order

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- Marijuana dispensary (only for the sale of medical marijuana or curbside delivery pursuant to **Executive Order D 2020 011**)
- Liquor stores
- Firearms stores
- Hardware, farm supply, and building material stores
- Establishments engaged in the retail sale of food and any other household consumer products (such as cleaning and personal care products), excluding retailers of only health and nutrition-related products (vitamins, minerals, supplements, herbs, sports nutrition, diet and energy products)
- Establishments engaged in the sale of products that support working from home (this exclusion does not include businesses that primarily sell hobby craft supplies)

5. Critical Services, Including:

- Trash, compost, and recycling collection, processing and disposal
- Mail and shipping services, and locations that offer P.O. boxes
- Self-serve laundromats and garment and linen cleaning services for critical businesses
- Building cleaning and maintenance
- Child care services
- Automobile rental, automobile online sales with no touch delivery service, auto supply and repair (including retail dealerships that include repair and maintenance, but not in person retail sales)
- Warehouse/distribution and fulfillment, including freight distributors
- Funeral homes, crematoriums, and cemeteries may operate at 50% of the posted occupancy limit not to exceed 50 people, with strict compliance with **Social Distancing Requirements** for employees and any attendees of services
- In-person pastoral services for individuals who are in crisis or in need of end of life services provided social distancing is observed to the greatest extent possible.
- Houses of worship may operate as authorized in Section II.M of this Order
- Storage for **Critical Businesses**
- Animal shelters, animal boarding services, animal rescues, zoological facilities, animal sanctuaries, and other related facilities
- Moving services

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- In person group counseling or recovery meetings for substance abuse or behavioral health following social distancing of 6 feet and no more than 10 participants

6. News Media

- Newspapers
- Television
- Radio
- Other media services

7. Financial and Professional Institutions, Including:

- Banks and credit unions
- Insurance and payroll
- Services related to financial markets
- Professional services, such as legal, title companies, or accounting services, real estate appraisals and transactions

8. Providers of Basic Necessities to Economically Disadvantaged Populations, Including:

- Homeless shelters and congregate care facilities
- Food banks
- Human services providers whose function includes the direct care of patients in State-licensed or funded voluntary programs; the care, protection, custody and oversight of individuals both in the community and in State-licensed residential facilities; those operating community shelters and other critical human services agencies providing direct care or support

9. Construction, Including but not Limited To:

- Housing and housing for low-income and vulnerable people
- Skilled trades such as electricians, plumbers
- Other related firms and professionals who provide services necessary to maintain the safety, sanitation, and critical operation of residences and other **Critical Businesses** or **Critical Government Functions**, and other essential services

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10. Defense

- Defense, security, and intelligence-related operations supporting the State of Colorado, local government, the U.S. Government or a contractor for any of the foregoing
- Aerospace operations
- Military operations and personnel
- Defense suppliers

11. Critical Services Necessary to Maintain the Safety, Sanitation and Critical Operations of Residences or Other Critical Businesses, Including:

- Law enforcement
- Fire prevention and response
- Building code enforcement
- Security
- Emergency management and response
- Building cleaners or janitors
- General maintenance whether employed by the entity directly or a vendor (including maintenance and repair of ordinary household and business appliances but not in-person retail sales of such products)
- Automotive and bicycle repair
- Disinfection
- Snow removal
- Bail bonds agents
- Pest control

12. Vendors that Provide Critical Services or Products, Including Logistics and Technology Support, Child Care and Services:

- Logistics
- Technology support for online and telephone services
- Child care programs and services
- Government owned or leased buildings
- **Critical Government Functions**

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13. Educational Institutions that Provide Critical Services to Students and the General Public:

- P-12 public school and private schools for the purpose of providing meals, housing, facilitating or providing materials for distance learning, and providing other essential services to students, provided that **Social Distancing Requirements** are observed.
- Postsecondary institutions, including private and public colleges and universities, for the purpose of facilitating distance learning, providing in person classroom or laboratory education for less than 10 students per classroom or lab in medical training fields only, or performing essential functions, provided that **Social Distancing Requirements** are observed, such as security, medical and mental health services, housing, food services, and critical research.

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APPENDIX G: COUNTY VARIANCE REQUESTS

Governor Jared Polis issued **Executive Order D 2020 044 Safer at Home** effective April 27, 2020, updated with **Executive Order D 2020 079**, and now replaced with **Executive Order D 2020 091 Safer at Home in the Vast, Great Outdoors**. The key elements of the Order are that most people still stay at home as much as possible and avoid unnecessary social interactions; vulnerable populations continue to stay at home except to support or perform necessary activities or participate in critical government functions or critical businesses; there is limited reopening of postsecondary institutions, and certain business operations are permitted; people are still encouraged to stay within their county of residence or employment as much as possible; public and private gatherings of more than ten (10) persons are prohibited; and Coloradans are advised to wear non-medical cloth face coverings that cover the nose and mouth whenever in public.

Any county that desires to apply for a variance from part or all of the executive order may do so after meeting the following criteria and submitting an alternative COVID-19 suppression plan to be approved or denied by the Colorado Department of Public Health and the Environment (CDPHE). The application must be submitted directly to CDPHE through the online application process, found [here](#).

Criteria for variance consideration:

- 1) The local public health agency endorses the alternative plan;
- 2) Local hospitals can verify that they have the capacity to serve all people needing their care;
- 3) The county commissioners or, in the case of the City and County of Denver, the mayor of Denver, or, in the case of the City and County of Broomfield, the city council, vote affirmatively to adopt the alternative plan in place of the state Safer-At-Home order; and
- 4) Counties with sovereign tribal nations (Ute Mountain Ute and Southern Ute Indian tribes) must obtain a letter of support from tribes and include it with their variance application.

The local variance process allows communities that are not experiencing a high rate of transmission to tailor social distancing policies to local conditions, in order to promote community wellness and economic stability. To protect other communities and hospital systems statewide, it is paramount that the local variance process only be used when transmission is at a low enough level to be suppressed through testing and containment efforts to detect positive cases, ensure successful isolation and quarantine close contacts. Examples of local conditions that should be considered in seeking a variance include: a low number of new cases per day, cases declining for the past 14 days, incidence below the state average, declining positive tests as a percent of total tests for the past 14 days, low and stable case growth rate or equivalent, and having an early warning system to detect an increase in community spread or outbreaks, with

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triggers for tightening restrictions to prevent a breach of local hospital system capacity. Considerations and triggers should be documented in the plan submitted to CDPHE.

Variance requests will be evaluated based on local epidemiological data to assess whether the county requesting the variance has a disease prevalence that is low, medium, or higher than the statewide average. If higher, other metrics may be considered such as two-week case trend, percent positivity of tests and, whether outbreaks exist and are contained. The variance will be commensurate with the local virus transmission and disease burden.

CDPHE is available to provide technical assistance to any county considering a variance. The department will consider applications for variances based on the submitted plan's rationale for a step down and the presence of an early warning system with triggers for tightening back up. CDPHE reserves the right to approve or deny applications. All variances granted pursuant to this Order remain in effect until the Order expires without further extension or is terminated, unless automatically rescinded pursuant to the terms of the variance approval by CDPHE, rescinded for other reasons by CDPHE, or rescinded by the county.

Approved local variances may be rescinded at the discretion of the local public health agency based on changes to State executive or public health orders. If a variance request is rescinded at the local level, the state orders will remain in effect. Local public health agencies may also choose to maintain approved variance requests in the event that a State order becomes less restrictive than the approved variance. At no point may an approved variance request be altered to be less restrictive in any aspect than state orders without updated approval from the Colorado Department of Public Health and Environment.

Counties that choose to not comply with this executive order or an approved variance will be subject to the loss of emergency preparedness funds.

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APPENDIX H: NON-CRITICAL MANUFACTURING

I. Effective May 4, 2020, **Non-Critical Manufacturing** may resume if the business can demonstrate compliance with the requirements of this Order, including Section II.I, and all of the following:

A. Employers must implement the following measures within the workplace to minimize disease transmission:

1. Create and implement policies or procedures for all of the following:
 - i. Limiting group interactions to keep any group less than ten (10) people by
 - a. staggering of shift changes, breaks, lunches, etc., and
 - b. eliminating all-staff in-person meetings or lunches;
 - ii. Modifying the flow of people traffic to minimize contacts, such as arranging one-way flow of work and people;
 - iii. Implementing 6 foot distancing and impermeable barriers between employees whenever possible;
 - iv. Limiting the sharing of tools, equipment, or other resources to the greatest extent possible, and if not feasible, implement cleaning and disinfection protocols as often as possible for any such shared tool, equipment and resources; and
 - v. Requiring hand washing upon arrival and before departure, establishing set hand washing time frames throughout shifts, and providing additional hand washing stations if possible.
2. Conduct cleaning protocols as follows:
 - i. Daily deep cleaning and disinfecting and full cleaning in-between shifts in accordance with [CDPHE guidance](#); and
 - ii. Establish protocols to increase the frequency of sanitization in work and common spaces, following OSHA requirements and CDPHE guidance, [found here](#);
3. Provide contactless options, such as entry to the worksite, payments, etc., whenever applicable and possible;
4. Use paperless, electronic options whenever possible to reduce the use of sharing paperwork;
5. Ensure ventilation of work and break areas is in line with [OSHA guidance](#);
6. Support transportation arrangements that discourage carpooling; and
7. Develop a Preparedness and Response document in accordance with OSHA guidance.

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B. Employers must implement the following measures for employees to minimize disease transmission:

1. Provide guidance about how to comply with 6 foot distancing;
2. Designate workers to monitor and facilitate distancing on processing floor lines;
3. Require employees to use masks or face coverings, except where doing so would inhibit that individual's health;
4. Require employees to wash their hands upon arrival to and before departure from the facility, as well as frequently during workshifts, in accordance with the policy required in Section I.A.1.vi of this **Appendix**;
5. Disinfect work stations between shifts and/or at the end of the workday;
6. Group employees into teams or shifts that remain together;
7. Stagger employee lunch and break times;
8. Encourage all employees not critical to in-person operations to continue working from home or working remotely; and
9. Encourage the wearing of masks or other face coverings while carpooling or taking other forms of public transportation.

C. Employers must implement the following measures regarding customers to minimize disease transmission:

1. Prohibit entry to the worksite of all non-essential external visitors;
2. Conduct symptom checks for any essential visitors who will interact with employees;
3. Require essential visitors to wear masks or face coverings; and
4. Encourage 6 foot distancing and implement procedures to limit person-to-person interaction in inbound/outbound shipping areas.

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APPENDIX I: RESTAURANTS

I. Effective May 27, 2020, while **Restaurants** remain encouraged to continue curbside pick up and delivery, including alcohol pick up and delivery, **Restaurants** may resume in-person dining if the business can demonstrate compliance with the requirements of this Order, including Section II.I, and all of the following:

A. Employers must implement the following measures within the workplace to minimize disease transmission:

1. Indoor and outdoor in-person services
 - a. Post signage notifying patrons and employees of hygiene and sanitation expectations, including not entering if they are experiencing any symptoms.
 - b. Patrons in different parties must be a minimum of 6 feet apart. The spacing of tables should be a minimum of 6 feet to ensure proper distancing.
 - c. Limit party size to 8 people or less.
 - d. All employees must wear facial coverings that cover the nose and mouth.
 - e. Employees may utilize disposable gloves as normally required by their governing regulations. Employees that are directly involved with disinfecting equipment and surfaces within critical business and/or have direct contact with customers shall wear gloves when involved in these activities.
 - f. Cleaning and disinfection of all shared surfaces must be done between seatings.
2. Additional indoor dine-in service requirements include:
 - a. Limit service to no more than 50% indoor posted occupancy code limit, with no more than 50 patrons total, whichever is less.
 - b. Ensure proper ventilation per [OSHA guidance](#)
3. Restaurants must make every effort to maintain physical distancing at all times, both inside and outside the establishment, including:
 - a. Using a reservation system, exclusively if possible;
 - b. Disallowing close proximity to others outside the patron's group through eliminating communal or seat yourself options
 - i. Bar seating options should only be available if the bar is not being used for bar service;
 - c. Eliminating self-service stations or buffets; and
 - d. Provide appropriate signs or markings within the **Restaurant** to space lines, indicate which tables are unavailable, prohibit games and dance floors that encourage gatherings, and direct foot traffic.
4. Restaurants must implement measures to maintain the cleanliness and

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sanitation of the restaurant, including:

- a. Minimize or eliminate high touch surfaces and multi-use objects, such as games, table cloths if used for multiple seatings, permanent menus, and condiments, and clean and disinfect any shared objects between uses;
- b. Increase cleaning and disinfection protocols and track with publicly posted cleaning logs including:
 - i. Clean and disinfect restrooms every hour, and
 - ii. Block off stalls and urinals with proper signage to adhere to 6 feet distance between patrons; and
- c. Use disposable items wherever possible, such as single-use menus and condiments.

B. Employers must implement the following measures for employees to minimize disease transmission:

1. Establish a minimum of 6 foot physical distancing standards and train employees on maintaining distancing between employees to the greatest extent possible
 - a. Consider implementing workflow requirements, dividers at pay counters and hostess areas, and modifying the menu to free up kitchen space.
 - b. Limit group interactions including staggering of shift changes, breaks, no consumption of family or shift meals onsite, etc.
 - c. Conduct virtual staff meetings whenever possible, any all staff meetings must meet 6 foot distancing requirements.
2. Face coverings and gloves
 - a. Require employees to wear facial coverings at all times, and encourage the use of gloves when in contact with customers or goods.
 - b. Require facial coverings and encourage gloves for vendors, suppliers, and contract workers entering the licensed establishment.
3. Employee sanitary requirements
 - a. Encourage frequent breaks to wash hands (at least every 30 minutes) including upon arrival and departure.
 - b. Strict adherence to the hygienic practices listed in the *Colorado Retail Food Regulations* regarding hand washing and glove use.

C. Employers should implement as many of the following measures as feasible regarding customers to minimize disease transmission and assist in any necessary outbreak investigations:

1. To facilitate notifying customers if a disease exposure occurs, consider
 - a. providing an option for customers to “sign in”, and
 - b. utilizing a reservation system;
2. Implement as feasible the following low or no touch options:
 - a. Provide contactless payment options, and
 - b. Continue curbside pick up/delivery options and recommend for

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- vulnerable individuals or those unable to adhere to hygienic and distancing requirements;
3. Ensure 6 foot distancing at all times by implementing the following:
 - a. Block of lobbies or waiting areas completely, or establish customer waiting areas that maintain proper social distancing from other guests, and
 - b. Restrict standing or congregating in public spaces such as the bar area, entrance or exit; and
 4. Request facial coverings be worn by customers when not seated for dining, and consider refusing service to customers who refuse to adhere to hygiene and social distancing requirements.

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APPENDIX J: CHILDREN'S DAY CAMPS, YOUTH SPORTS DAY CAMPS AND EXEMPT SINGLE SKILL-BUILDING YOUTH CAMPS

- I. Effective June 1, 2020, summer camps and sports camps may open for business if the camp operator can demonstrate compliance with the requirements in this Appendix.
- A. Prior to hosting a camp, the camp operators must create a plan that implements all of the following:
1. All activities, including recreation, transportation, and food service must comply with the following restrictions:
 - a. Groups of campers are limited to 25 or fewer outdoors, and 10 or fewer indoors per room, and shall not mix with other groups.
 - b. Six feet physical distancing is required at all times, which may limit further the size of the group due to the size of the space.
 - c. Require face coverings during transportation in camp vehicles to and from the camp.
 2. For staff and camper health and safety:
 - a. Provide adequate personal protective equipment (PPE) for staff who supervise and care for ill campers, staff, and volunteers.
 - b. Determine the staffing needs, including the availability of substitute staff if staff or volunteers become ill or are exposed.
 - c. Ensure space is available to isolate ill staff and campers (cots, bedding, restrooms, and supervision).
 - d. Ensure the on-call availability of a nurse or health care professional.
 - e. Establish protocols for responding and reporting cases to health care staff, local public health authorities, and CDPHE.
 - f. Prepare procedures for closures following a case or outbreak of COVID-19.
 - g. Provide access to or sufficient supplies of all of the following:
 - i. public restrooms, drinkable water sources, and picnic or other eating areas during activities at outdoor locations;
 - ii. handwashing/hand sanitizing locations; and
 - iii. adequate cleaning and disinfecting supplies
 - h. Train camp staff and volunteers on the requirements of this Order, as well as prevention, transmission, and care of COVID-19 illness.
 3. Single-night overnight excursions are permitted so long as the campers and staff remain strictly cohorted.
- B. Camp operators must meet all of the following requirements while camps are in session:
1. Staff, volunteer and camper health.
 - a. Screen staff, volunteers and campers for symptoms and close-contact exposures upon arrival. Exclude ill individuals from the camp, and encourage them to use the [CDPHE Symptom Tracker](#)

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- b. Staff or volunteers sent home must adhere to [isolation](#) and exclusion requirements.
 - c. Establish protocols for staff, volunteers and campers to alert health care staff of symptoms in themselves or campers.
 - d. Determine if any staff or volunteers are at a higher risk for COVID-19 and consider whether job duties that don't involve interaction with others are advisable.
2. Require staff, volunteers and campers to do all of the following:
 - a. Remain with the same group of campers and maintain physical distancing of at least 6 feet whenever possible, including during meals and recreation;
 - b. Wash hands upon arrival, before eating, and at regular intervals throughout the day;
 - c. Stagger activities as much as possible to avoid any mixing of groups, and
 - d. Wear masks or face coverings whenever possible.
3. Post signs or mark spaces to ensure 6 foot minimum distancing, and limit any activities that are not conducive to maintaining this distance.
4. Educate campers as needed on COVID-19 prevention, including respiratory etiquette and good hygiene, in accordance with public health guidance.
5. Ensure sufficient cleaning and disinfecting of commonly touched surfaces, equipment, and vehicles throughout the camp.
6. Provide frequent communication with all families of enrolled campers related to the occurrences of COVID-19 at the camp, the camp's responses, and all issues in the public health order.

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APPENDIX K: OUTDOOR RECREATION

I. Effective June 4, 2020, outdoor recreation services or activities, including non-guided and guided recreation, equipment rentals, river outfitters, rafting, Jeep tours, developed hot springs, zip lines, ropes courses, and outdoor artificial climbing walls, may operate if authorized by the local jurisdiction. Operators of recreational services and activities must meet any local policies in effect as well as all of the following requirements:

A. Distancing and Capacity Requirements

1. Maintain a distance of 6 feet from patrons and fellow employees, except in cases where it is unsafe to maintain that distance.
2. Limit the number of people inside a facility to no more than 10 at one time, at a maximum of 50% occupancy.
3. For vehicles used to transport patrons, the following requirements apply:
 - a. No closed-air vehicles or tours are allowed, as windows must remain open during the transport or tour.
 - b. Limit smaller vehicles or crafts to two household units not including guides, up to 10 people.
 - c. If larger vehicles or crafts (trains, large boats) can accommodate multiple individual household units and ensure appropriate physical distance between those groups, multiple units are permissible.
 - d. Limit passenger buses and vans to no more than 50% capacity, or less if distancing requirements cannot be met between groups, and prohibit use of the seat behind the driver.
6. Conduct staging operations such as customer check-ins and end-of-trip operations outdoors with parties from different households spaced 6 feet apart.
7. Maintain and promote physical distance during a tour or trip. Rafts or vehicles should not be full, and ensure distance between guide and patrons.

B. Hygiene, Cleaning and Disinfection Requirements

1. Post signs for employees and customers outlining good hand/respiratory hygiene and safety measures being taken. Signs should be in languages customers will understand. ([CDC examples](#))
2. Encourage hand hygiene by directing customers to where they can wash their hands with soap and water or use hand sanitizer.
3. Vehicles used to transport patrons must be cleaned and disinfected after each use.
4. Disinfect all equipment used by patrons as well as surfaces or items in common contact with patrons between each use.

C. Operators and Employees

1. Wear face coverings at all times during staging and disembarking operations. Where safe, wear face coverings during trip operations.
2. Operators must conduct symptom and temperature checks for employees and refer symptomatic employees to the CDPHE Symptom Tracker (Additional Guidance). Employees who exhibit COVID-19 symptoms should not come to work. Employees who develop COVID-19 symptoms while at work should immediately notify their supervisor and be separated from others, sent home, and

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referred to state or company support services.



Coronavirus Disease 2019

COVID-19

GUIDANCE FOR PLACES OF WORSHIP & LIFE-RITE CEREMONIES

The safest option to protect the most people and prevent the spread of the virus is **to offer services online** during this phase of the pandemic.

We strongly recommended that those who are at higher-risk of severe illness from COVID-19 (e.g. 65 years and older, chronic lung disease, serious heart conditions, immunocompromised, severe obesity, diabetes, liver disease, chronic kidney disease undergoing dialysis, etc.) continue using online options.

Because spiritual needs cannot always be met through online programming, some spiritual leaders may decide to manage the risk and re-open portions of their in-person services. These guidelines and recommendations will help protect the health of those who choose to attend religious and spiritual gatherings in-person during this time. These guidelines and recommendations apply to houses of worship and settings where life-rites occur, such as funeral homes or venues for wedding ceremonies. Social receptions or parties associated with those events still must follow mass gathering limitations. Life-rites include wedding ceremonies, graduation ceremonies, funeral services, baptisms, brisks, and other religious ceremonies..

We welcome ongoing feedback, and will continually review these in partnership with you. To help us understand the impact on your communities, please complete this survey by June 12, Please find the survey [here](#)

Required guidelines

Capacity limitations

- Indoors: Maximum 50% capacity or up to 50 people per room.
- Outdoors: Groups from different households spaced at least 6 feet apart, up to local capacity levels.

Physical / social distancing

- Entering and exiting buildings should include at least 6 feet physical distancing by party. A “party” includes members of a household who live together.
- Seating in houses of worship should be arranged in such a way as to maintain at least 6 feet of distance *in every direction* between individuals or parties.
- Faith communities are encouraged to add additional services to accommodate the need for physical distancing, as well as consider shortening the duration of services to minimize exposure time.
- Houses of worship should have a plan for distancing requirements in restrooms (either one person at a time or close off multiple stalls in between the stalls that can be used).
- Multiple large rooms in a facility can be used as long as each space can follow ALL the guidelines and each room has 4 walls and a door. Service times may have to be staggered to accomplish this. Leaders must attend to distancing requirements, available restrooms, separate entrance/exit doors, and timely cleaning practices.

Cleaning practices

- Follow the [Colorado Department of Health and Environment's Cleaning Guidance.](#)
- Restrooms should be cleaned at minimum between each service.
- Any metal or plastic on chairs or surfaces must be disinfected between services.
- Additional resources can be found at [CDC Coronavirus Disease 2019 \(COVID-19\) - Get Your Community- and-Faith-Based Organizations Ready for Coronavirus Disease 2019](#)

Strongly recommended guidelines

Masks

- Follow the Colorado Department of Public Health and Environment's [Guidance for wearing masks/cloth face coverings.](#)
- We strongly encourage that masks be worn at all times while on the premises by staff, volunteers, and congregants attending worship services. Children 2 and under, those with trouble breathing, or those unable to remove a mask without assistance should not wear a mask.
- Houses of worship should have extra masks on hand for visitors who do not have their own. Any item provided to be worn must be disposable or fully sanitized before and after each use.

Pre-registration

- Use a pre-registration system, social media platform, or private messaging to distribute the number of worshippers across the services being offered (in accordance with the physical distancing guidelines).
- Develop [a protocol for symptom screening](#): self-reporting, health surveys, or on-site checks. Anyone with any symptoms may not attend.
- Consider allowing for 10% capacity at each service for "walk-ups" who do not have access to the technology to sign up or do not know how to use it.
- Consider who will manage additional participants at the door.

Employees and volunteers

- Upon arrival, all employees and volunteers should have their temperature taken and symptoms screened. Anyone with a temperature over 100.4 or showing [COVID-19 symptoms](#) should go home. [Sample Screening Form.](#)
- Masks and gloves must be worn.
- Training should be provided on sanitation. If anyone has symptoms, follow [workplace outbreak guidelines.](#)

Directing movement of people (entry / exit Doors)

- Employees or volunteers (ushers) should provide physical distance directions for where to walk and which areas are available for seating/standing as the service begins and ends.
- Display clear signage in languages worshipers understand.
- Attendees should enter and exit the facility as directed: one person/household party at a time adhering to physical distancing guidelines.
- Mark the floor of the worship space (aisles), the lobby, and the area outside the entrance and exit with physical distancing markers to cue people where to stand/wait.
- Avoid any close congregating or crowding before, during, or after the service.

- Use separate doors for entry and exit. If only one door is available, ensure times of services are spread out enough that the exit of one service can be completed before entry for the next service is allowed.
- Enable people to stay 6 feet apart while waiting to enter the building. This can include ground markings, or other tactics like encouraging people to remain in their cars.
- Throughout the service, people need to maintain at least 6 feet of distance from all persons not in their household/party.
- After services, people should return directly to vehicles, maintaining at least 6 feet of distance from others.

Create a “touchless” experience

Where possible, houses of worship are encouraged to create a plan which allows for worshippers to avoid all contact with surfaces.

- **Doors:** Doors entering the building and inside the building should either remain propped open or be opened/closed by employees/volunteers throughout the entire process.
- **Hand sanitizer:** Locate touchless hand-sanitizer units at the front door and throughout the facility.
- **Greeters:** Greeters and attendees must greet while maintaining at least 6 feet of distance at all times and refrain from shaking hands or any personal contact.
- **Designated standing room:** Where possible, some spaces can be designated for those who desire to stand during the service with proper physical distancing (so as not to touch the chairs).
- **Communion:** Direct interaction between faith leaders and congregants should be touch-free. Individually packaged communion is the safest option. When communion is not individually wrapped, the container for the host/bread should remain covered and uncontaminated during blessings and prayers. Distribution should be touch-free. Common cups are very high-risk and should not be used.
- **Offering:** Offering boxes or baskets should be attached to the wall or set at an entrance or exit of the worship space in a way that attendees do not have to touch it when they give. Do not pass baskets or plates among attendees.
- **Hymnals/religious books:** These items should be removed and photocopies should be made available that can be discarded after one individual use, if permissible in that faith tradition. Consider projecting materials on a wall/screen for congregations to read together. Best practice is for worshippers to bring their own religious books and/or use technology to project lyrics, scriptures, liturgies, etc., so no physical copies are necessary, or provide links that can be used to get to the materials on a cell phone.
- **Contact with religious objects:** At this phase of re-opening, there should be minimal communal contact with objects of religious or spiritual significance. If possible, consider wearing gloves or other protection while handling.
- **Food and beverage:** No food or beverage may be offered by the house of worship. No food or beverage may be brought in by individual attendees to share with others.

Presenting speakers/singers/choirs

- Masks or face coverings should be worn to the greatest extent possible, as loud speaking and singing appear to spread COVID-19 further.
- Speakers, preachers, presenters, and singers should move considerably further back (25-27 feet) than the prescribed 6 feet of physical distance to maximize distance between them and the front row of attendees.
- Choirs should not be used at this time given the strong risk of viral spread from singing.

Children's and youth programming

- Children and youth may attend religious services with parent(s)/caregiver(s) who feel confident they can enforce at least 6 feet of distance between children from different households.
- Particular services should be catered to families and publicized accordingly in order to mitigate the risk of cross-generational transmission.
- Houses of worship that would like to provide programming for children must demonstrate an ability to adhere to all [guidelines for chld care centers](#) published by CDPHE. Youth programming, separate from the religious services, may occur but with a strong recommendation for meeting outdoors, providing at least 6 feet of distance between parties from all sides, and the use of masks by all participants.

Other areas of recommendation/consideration

Outdoor services

- These services are allowed if all applicable guidelines listed in this document can be followed. Special consideration must be given to directing people from the parking lots to the outdoor setting while physical distancing, as well as indicating where they can sit/stand.
- Guests should bring their own lawn chair/blanket to minimize the shared use of chairs and other items (umbrellas, etc.).
- Masks and at least 6 feet of distance between parties is still required.
- Weddings that can follow outdoor service guidelines are allowed.

Security

- Unfortunately, hate groups have used the fear of the pandemic to promote discrimination -- particularly against Asian, Jewish and Muslim communities. Any plans for reopening should be made with an awareness of these types of events.

Muslim ablution

- Where possible it is recommended ablution occur privately at the attendees' place of residence before arriving at the mosque. If that is not possible, staff or volunteers should clean faucet handles and other items between each use.

Religious studies, small groups, and meetings

- Religious studies, book studies, and other small groups are strongly encouraged to continue to meet online.
- Staff might consider limited meetings in the religious facility with appropriate physical distancing and masks. Where possible these groups are encouraged to meet outdoors and to follow proper physical distancing guidelines and the use of masks.
- Religious facilities should follow the cleaning, movement, and mask guidance above.

Food pantries and other services

- These activities may occur at the religious facility assuming all the relevant guidelines listed in this document can be followed and additional CDPHE guidelines for specific service facilities are followed. When distributing items, the gatherings should remain at 10 or under in one room with physical distancing guidelines, masks, and cleaning.

Other sacred ceremonies

As with all other services offered, if all the above guidelines can be met, these events are permitted.

Additional Comments

- Please note, these are recommendations for June, and possibly July, based on current data.
- Houses of worship should immediately refer to the [health department's guidance](#) if there is deemed to be an outbreak in their community.
- Consider these recommendations as ways to protect your community and the general public. Do not try to find loopholes in order to bypass the recommendations. Be sure to check with your insurance company about liability around COVID-19 exposure in your facility.
- Areas that request and receive a variance from CDPHE can abide by the guidelines in the approved variance application.



[Home](#) ☐ [Guidance for people attending protests](#)

Guidance for people attending protests

[Home](#)

[About COVID-19](#)

[People at higher risk for severe illness](#) ☐

[COVID-19 & well-child checkups](#)

[Do you have symptoms?](#) ☐

[Prevent the spread of](#)

Available languages (last updated 06/03/20): [Español](#) | [Tiếng Việt](#) | [中文](#) | [Soomaali](#) | [العربية](#) | [_____](#)

It is important for people to be able to demonstrate peacefully and have their voices heard. We strongly encourage all participants - protestors, law enforcement, and members of the media - to follow these guidelines to stay safe and protect themselves from COVID-19 transmission if attending protests or demonstrations.

Maintain physical distancing.

Whenever people gather in large numbers, there is a potential for the disease to spread. It's important to maintain at least 6 feet of physical distancing or more. Shouting generates more aerosols and can spread the virus further, increasing COVID-19 transmission. Some police tactics, such as tear gas and pepper spray, could exacerbate the situation by prompting people to cough and gasp for air. We caution police that these tactics can lead to increased

COVID-19 ☐
Cleaning guidance
Mask guidance
Protest guidance
Symptom screening
Isolation & quarantine ☐
Safer at Home ☐
Public health & executive orders ☐
Health Equity Response Team ☐
Reducing fear and stress ☐
Guidance documents & resources
LPHAs and health care providers ☐
General Questions and Answers
Communication resources ☐

transmission of COVID-19.

Wear a mask.

Wearing a mask is very important if you plan to gather in large groups because people who have no symptoms can spread COVID-19. Wearing a non-medical mask or face covering helps minimize the spread of the virus. Everyone should wear a mask when out in public. Instructions for making masks can be found at the [Colorado Mask Project](#).

We understand the reasons why wearing a mask can be difficult.

We recognize that for people of color, racial bias and stereotypes of criminality have created real fears about going out in public with a mask or face covering. People of color have been removed from stores for wearing masks, and many fear for their lives. We understand these concerns, and at this moment, they must be weighed against the additional protections masks can provide from transmission and exposure to COVID. We encourage you to wear one.

Get tested.

Everyone who participates in protests or demonstrations should monitor themselves for [COVID-19 symptoms](#). Anyone with symptoms should be tested right away. People without symptoms who believe they were exposed to someone with COVID-19 may want to seek testing seven days after they believe they were exposed. That allows people to learn if they are positive early in their infection. However, some people may not have enough virus to be detected or cause symptoms for up to 14 days after their exposure. For that reason, people who believe they have been exposed to COVID-19 should minimize their contact with others for 14 days after exposure, even if they test negative before the two full weeks have passed. You can find a map of community testing sites [here](#). You can also consider a [telehealth visit or nurseline advice](#) before seeking in-person care.

People of color are disproportionately impacted by COVID-19.

They may be more likely to be exposed to the virus in essential jobs; are more likely to have limited access to affordable health care, childcare, and transportation; are more likely to live in neighborhoods with high air pollution rates; and are more likely to face unsanitary conditions in prisons, jails, and detention centers. Due to these types of inequities, people of color face chronic disease health disparities, leaving them with a higher risk of dying due to COVID-19.

Laboratory
services
(external link)

State recovery &
assistance ☐

Data ☐

Blog

Racism is a threat to public health.

We stand with the American Public Health Association (APHA) and agree that [racism is an ongoing public health crisis](#) that needs our attention now. “We see discrimination every day in all aspects of life, including housing, education, the criminal justice system and employment. And it is amplified during this pandemic as communities of color face inequities in everything from a greater burden of COVID-19 cases to less access to testing, treatment and care.” - APHA

We want you to use your voice for issues that are important to you. Please do so safely.

Contact

COVID-19-related issues & concerns

Colorado Crisis Services

We provide free, confidential, professional and immediate support for any mental health, substance use or emotional concern, 24/7/365.

Call 1-844-493-TALK (8255) or text TALK to 38255 to speak to a trained professional.

211 Colorado

2-1-1 is a confidential and multilingual service connecting people to vital resources across the state.

Call 2-11 or (866) 760-6489 Text your ZIP CODE to 898-211

CO-HELP

Colorado’s call line for general questions about the novel coronavirus (COVID-19), providing answers in many languages including English, Spanish (Español), Mandarin (普通话) and more.

Call 303-389-1687 or (877) 462-2911

Resources & info

Media line (for media only): 303-900-2849

[CDPHE main website](#)

[Colorado Emergency Management](#)

[Stay at home Colorado guide](#)

[Help Colorado Now](#) - Volunteer, donate, contribute, apply for funding.

[State resource for COVID-19 information](#)

[OnwardCO.org](#) - One-stop resource for Coloradans impacted by job loss to connect with life essentials, training, and jobs.

[Request a website change](#)

If you have symptoms and think you have been exposed, call a health care provider.

Follow us

CDPHE

Colorado Emergency Management

Available languages

Español (Spanish) | Tiếng Việt (Vietnamese) |

Soomaali (Somali) | 中文 (Simplified Chinese) |

(Arabic) العربية | _____ (Nepali)

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

* * *

CALVARY CHAPEL LONE MOUNTAIN

Case No. 2:20-cv-00907-RFB-VCF

Plaintiff(s),

ORDER

v.

STEPHEN F. SISOLAK
AARON DARNELL FORD
JUSTIN LUNA

Defendant(s).

I. INTRODUCTION

Before the Court is Plaintiff Calvary Chapel Lone Mountain's Emergency Motion for Preliminary Injunction. ECF No. 11. For the following reasons, the Court denies the motion without prejudice.

II. PROCEDURAL BACKGROUND

Plaintiff brought its complaint on May 20, 2020. ECF No. 1. The complaint asserted various federal and state constitutional challenges to Governor Sisolak's emergency directives in response to the COVID-19 pandemic. Plaintiff filed its motion for a preliminary injunction on May 21, 2020. ECF No. 11. On May 27, 2020, the Court directed that Plaintiff provide a supplement to its motion in light of Governor Sisolak's revised emergency directives allowing places of worship to resume in-person services. ECF No. 13. Plaintiff provided its supplement and Defendants responded. ECF Nos. 15 – 18. The Court held a hearing on the motion on June 9, 2020. This written order now follows.

III. FACTUAL BACKGROUND

The Court makes the following findings of fact. Plaintiff Calvary Chapel Lone Mountain is a church located in Las Vegas, Nevada. On May 26, 2020, Defendant Governor Sisolak announced that Nevada would enter “Phase Two” of its reopening. To that end, he issued Emergency Directive 021 on May 28, 2020 (hereinafter the “Emergency Directive” or “Directive”). The Emergency Directive permits several categories of business and social activity to resume, subject to different restrictions. For example, Section 10 of the directive prohibits gatherings in groups of more than fifty in any indoor or outdoor areas. Emergency Directive, § 10. Communities of worship and faith-based organizations are allowed to conduct in-person services so that no more than fifty people are gathered, while respecting social distancing requirements. Id. at § 11. Section 20 similarly limits movie theaters to a maximum of 50 people. Id. at §20. Section 35 of the Emergency Directive allows casinos to reopen at 50% their capacity and subject to further regulations promulgated by the Nevada Gaming Control Board. Id. at § 35.

Calvary argues that the directive treats other secular businesses better than churches, as several other secular businesses are not subject to a fifty-person cap, but instead have an occupancy cap of up to 50% of their building capacity. Such distinctions, Calvary argues, violate Calvary’s federal and state constitutional rights. Calvary therefore seeks an injunction from this Court that would allow Calvary to adopt its own safety plan, which would increase occupancy to 50% of building capacity and allow attendance only by reservation, among other changes. Calvary also desires that the Court “enter an Order adopting guidelines substantiated by empirical data . . . and . . . based on fire code.” Pl’s Suppl. 11.

IV. LEGAL STANDARD

A preliminary injunction is “an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 22 (2008). To obtain a preliminary injunction, a plaintiff must establish four elements: “(1) a likelihood of success on the merits, (2) that the plaintiff will likely suffer irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in its favor, and (4) that the public interest favors an injunction.” Wells Fargo & Co. v. ABD Ins. & Fin. Servs., Inc., 758 F.3d 1069, 1071 (9th Cir. 2014), as amended (Mar. 11, 2014) (citing Winter, 555 U.S. 7, 20 (2008)). A preliminary injunction may also issue under the “serious questions” test. Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1134 (9th Cir. 2011) (affirming the continued viability of this doctrine post-Winter). According to this test, a plaintiff can obtain a preliminary injunction by demonstrating “that serious questions going to the merits were raised and the balance of hardships tips sharply in the plaintiff’s favor,” in addition to the other Winter elements. Id. at 1134–35 (citation omitted).

V. DISCUSSION

The Court denies the motion because it does not find that Calvary has demonstrated a likelihood of success on its federal constitutional claims and declines to exercise supplemental jurisdiction over Calvary state constitutional claims.

a. Equal Protection

“Under the Equal Protection Clause of the Fourteenth Amendment, all persons similarly situated should be treated alike.” Alpha Delta Chi-Delta Chapter v. Reed, 648 F.3d 790, 804 (9th Cir. 2011) (citing City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 439 (1985)). “A showing that a group was singled out for unequal treatment on the basis of religion,” supports a valid equal

1 protection claim. Alpha Delta, 648 F.3d at 804.

2 Although the case concerned the applicability of the Free Exercise Clause of the First
3 Amendment rather than an Equal Protection claim, the Supreme Court’s decision in South Bay
4 United Pentecostal Church v. Newsom guides this Court’s analysis. No. 19A1044, 2020 WL
5 2813056 (May 29, 2020).

7 The Free Exercise Clause of the First Amendment provides that “Congress shall make no
8 law respecting an establishment of religion or prohibiting the free exercise thereof.” Am. Family
9 Ass’n, Inc v. City & Cty. of San Francisco, 277 F.3d 1114, 1123 (9th Cir. 2002) (citing U.S. Const.
10 amend. I). A regulation or law violates the Free Exercise clause when it is neither neutral nor
11 generally applicable, substantially burdens a religious practice, and is not justified by a substantial
12 state interest or narrowly tailored to achieve that interest. Id. (citing Church of Lukumi Babalu
13 Aye, Inc. v. Hialeah, 508 U.S. 520, 531 – 32 (1993)).

15 The Constitution principally entrusts “[t]he safety and the health of the people” to the
16 politically accountable officials of the States “to guard and protect.” Jacobson v. Massachusetts,
17 197 U. S. 11, 38 (1905). When state officials “undertake[] to act in areas fraught with medical and
18 scientific uncertainties,” their latitude “must be especially broad.” Marshall v. United States, 414
19 U. S. 417, 427 (1974).

21 The Supreme Court examined the relationship between COVID-19 related executive orders
22 and the Free Exercise Clause in its recent order in South Bay. In South Bay, the Supreme Court
23 denied an application for injunctive relief enjoining enforcement of a portion of the California
24 governor’s executive order to limit the spread of COVID-19. Id. The order limited attendance at
25 places of worship to 25% of building capacity or a maximum of 100 attendees. Id. at 1. The
26 Supreme Court found that the restrictions appeared consistent with the Free Exercise Clause of the
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1 First Amendment. Id. Chief Justice Roberts first noted that “[s]imilar or more severe restrictions
2 apply to comparable secular gatherings, including lectures, concerts, movie showings, spectator
3 sports, and theatrical performances, where large groups of people gather in close proximity for
4 extended periods of time.” Id. Chief Justice Roberts then explained that the “[o]rder exempts or
5 treats more leniently only dissimilar activities, such as operating grocery stores, banks or
6 laundromats, in which people neither congregate in large groups nor remain in close proximity for
7 extended periods.” Id. Finally, Chief Justice Roberts concluded that, “[t]he precise question of
8 when restrictions on particular social activities should be lifted during the pandemic is a dynamic
9 and fact-intensive matter subject to reasonable disagreement,” and that when elected officials “act
10 in areas fraught with medical and scientific uncertainties,” their latitude “must be especially
11 broad.” Id. (internal citations omitted). “When those broad limits are not exceeded, they should
12 not be subject to second-guessing by an “unelected federal judiciary, which lacks the background,
13 competence and expertise to assess public health and is not accountable to the people.” Id.

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17 The Court finds the holding in South Bay applicable to this case. The Court finds the
18 Emergency Directive is neutral and generally applicable and therefore does not give rise to a valid
19 equal protection claim. Consequently, the Court finds that Plaintiff has not demonstrated a
20 likelihood of success on the merits of its claim.

21
22 Calvary argues that the Defendants in this case, based upon the plain language of the
23 Emergency Directive, have violated the First Amendment by ‘exceeding the limits’ of their
24 authority during a public health crisis. Calvary bases its argument on alleged differential treatment
25 between itself and other secular organizations/activities. Calvary points to several secular
26 businesses that it insists engage in comparable activity in which people gather in large groups and
27 remain in close proximity for large periods of time, including casinos, restaurants, nail salons,
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1 massage centers, bars, gyms, bowling alleys and arcades, all of which are allowed to operate at
2 50% of official fire code capacity. Calvary specifically focuses on casinos. Given that any social
3 behavior increases the risk of covid-19 transmission, Calvary argues, there is no scientific or
4 medical reason to distinguish between places of worship and other comparable activities.
5

6 The Court agrees that church services may in some respects be similar to casinos, in that
7 both are indoor locations in which a large number of people may remain in close proximity for an
8 extended period of time. The Court, however, disagrees that casinos are actually treated more
9 favorably than places of worship. During this phased reopening of Nevada by the Governor,
10 casinos are subject to substantial restrictions and limitations required by the Nevada Gaming
11 Control Board which exist *in addition* to and in conjunction with the requirements and oversight
12 provided by the Emergency Directive. See Emergency Directive, § 35; Addendum to April 21,
13 2020 Policy Memorandum posted May 29, 2020; 2020-30 Updated Health and Safety Policies for
14 Reopening after Temporary Closure posted May 27, 2020; Health and Safety Policy for the
15 Resumption of Gaming Operations Nonrestricted Licensees posted May 27, 2020; Procedures for
16 Reopening after Temporary Closure Due to COVID-19 posted April 21, 2020, Gaming Control
17 Board. Such additional regulatory policies set forth requirements related not only to the social
18 distancing and placement of table games or slot machines in the casino, for example, but they also
19 set forth requirements regarding training of the employees, financial operations and other internal
20 operations of casinos. Id. These casinos are also subject to regular and explicit inspection of all
21 aspects of the respective casino's reopening plan. Id. Indeed, gaming companies are one of the few
22 categories of organizations in which the directive specifically discusses enforcement and
23 punishment alternatives for violating the directive and concomitant promulgated regulations.
24 Emergency Directive, §35. Casinos are therefore subject to heightened regulation and scrutiny
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1 under these guidelines in comparison to churches, regardless of the difference in occupancy cap.
2 The Court finds that while Plaintiffs focus on the fifty-person cap for their clients, they fail to
3 consider the totality of restrictions placed upon casinos in their comparative analysis. Thus, even
4 if the Court were to accept casinos as the nearest point of comparison for its analysis of similar
5 activities and their related restrictions imposed by the Governor, the Court would nonetheless find
6 that casinos are subject to much greater restrictions on their operations and oversight of their entire
7 operations than places of worship.
8

9 The Court also finds that other secular entities and activities similar in nature to church
10 services have been subject to similar or more restrictive limitations on their operations. The Court
11 notes that church services consist of activities, such as sermons and corporate worship, that are
12 comparable in terms of large numbers of people gathering for an extend period of time to lectures,
13 museums, movie theaters, specified trade/technical schools, nightclubs and concerts. All of these
14 latter activities are also subject to the fifty-person cap or remain banned altogether under
15 Emergency Directive. See Emergency Directive, §§ 20, 22, 27, 30, 32. Given that there are some
16 secular activities comparable to in-person church services that are subject to more lenient
17 restrictions, and yet other activities arguably comparable to in-person church services that are
18 subject to more stringent restrictions, the Court cannot find that the Emergency Directive is an
19 implicit or explicit attempt to specifically target places of worship. Lukumi, 508 U.S. at 534
20 (striking down city council ordinance that specifically targeted and forbid animal sacrifices made
21 by a particular religious group). Additionally, whether a church is more like a casino or more like
22 a concert or lecture hall for purposes of assessing risk of COVID-19 transmission is precisely the
23 sort of “dynamic and fact-intensive” decision-making “subject to reasonable disagreement,” that
24 the Court should refrain from engaging in. South Bay, 2020 WL 2813056, at 1. As the Court finds
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1 that the Emergency Directive is neutral and generally applicable, there is no actionable facial Equal
2 Protection Claim, and Calvary has therefore not demonstrated a likelihood of success on the merits
3 of this claim.

4
5 **b. As-Applied Equal Protection Challenge: Selective Enforcement**

6 Calvary also brings an as-applied challenge. Specifically, Calvary points to what it alleges
7 is a lack of enforcement of the section of the Emergency Directive banning more than 50 people
8 from gathering, whether inside or outside, during recent protests. But in order to demonstrate
9 selective enforcement, it is not enough for Calvary to demonstrate that the directive is not being
10 enforced against secular activities. Calvary must also demonstrate that Defendants are *only or*
11 *primarily enforcing* the directive against places of worship. See Stormans, Inc v. Wiseman, 794
12 F.3d 1064, 1083 (9th Cir. 2015) (finding no evidence of selective enforcement against religiously
13 affiliated pharmacies in enforcement of drug delivery rules). In its briefing Calvary alleges that the
14 Attorney General's office stated that arrests would be made if the church was to exceed its fifty
15 person-cap. But this allegation is not supported by admissible evidence in the form of a declaration
16 by someone with personal knowledge of the events and Defendants dispute the validity of
17 Calvary's stated version of events. Absent more evidence from Calvary that Defendants have
18 actually enforced Emergency Directive only against places of worship, the Court cannot find that
19 Calvary has a likelihood of success on the merits of its as-applied Equal Protection challenge. If
20 Calvary does in fact have evidence of a pattern of selective enforcement against it, nothing in this
21 order shall prohibit it from returning to the Court with that evidence and filing a new motion for a
22 preliminary injunction.
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1 **c. Right to Travel Fifth Amendment**

2 “The Fifth Amendment right to travel protects the right of a citizen of one state to enter
3 and to leave another state, the right to be treated as a welcome visitor rather than an unfriendly
4 alien when temporarily present in the second state, and for those travelers who elect to become
5 permanent residents, the right to be treated like other citizens of that State.” Saenz v. Roe, 526
6 U.S. 489, 500 (1999).

7
8 The Court finds that Plaintiff has raised no cognizable right to travel claim based on the
9 facts alleged in the complaint and in the motion for preliminary injunction, and therefore does not
10 find a likelihood of success on the merits of this claim and does not find it to be a valid ground on
11 which to grant the injunction.
12

13 **d. Fifth and Fourteenth Amendment Due Process Claims**

14 Calvary’s final federal constitutional claim¹ is a Fifth and Fourteenth Amendment due
15 process claim. The Court also finds that Calvary has failed to demonstrate a likelihood of success
16 on the merits of its due process claim. The Supreme Court in Jacobson v. Massachusetts, and more
17 recently in South Bay, has made clear that the state has broad authority to pass emergency
18 measures to protect public health, and will not upset that authority absent clear excess of
19 constitutional boundaries. 197 U.S. 11, 38 (1905). Because the Court finds for the reasons stated
20 above that the Emergency Directive is a valid use of state police power, it finds that there is no
21 due process violation.
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¹ Plaintiff also raised a Takings Claim in the complaint but did not brief it in the preliminary
injunction briefing. Pl.’s Compl. at 24. The Court therefore declines to address the claim.

1 **e. State Constitutional Claims**

2 Calvary also brought several state constitutional claims. The Court is extremely reluctant
3 to order injunctive relief based on its construction of state law issues that have not been presented
4 to the Nevada Supreme Court, especially as the Court has already determined that Calvary has no
5 likelihood of success on any of its federal claims. See 28 U.S.C. § 1367(c)(2) (noting that federal
6 court may decline to exercise supplemental jurisdiction if the claim raises a novel or complex issue
7 of State law). For this reason, the Court declines to assert supplemental jurisdiction over Calvary's
8 state law claims.
9

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11 **VI. CONCLUSION**

12 **IT IS THEREFORE ORDERED** that Plaintiff Calvary Chapel Lone Mountain's
13 Emergency Motion for Preliminary Injunction (ECF No. 11) is DENIED.

14 DATED June 11, 2020.

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17 _____
18 **RICHARD F. BOULWARE, II**
19 **UNITED STATES DISTRICT JUDGE**
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