

EXHIBIT A

**FILED**  
**United States Court of Appeals**  
**Tenth Circuit**

**UNITED STATES COURT OF APPEALS**

**November 12, 2020**

**FOR THE TENTH CIRCUIT**

**Christopher M. Wolpert**  
**Clerk of Court**

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HIGH PLAINS HARVEST CHURCH;  
MARK HOTALING,

Plaintiffs - Appellants,

v.

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

Defendants - Appellees.

No. 20-1280  
(D.C. No. 1:20-CV-01480-RM-MEH)  
(D. Colo.)

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**ORDER**

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Before **LUCERO, MORITZ, and CARSON**, Circuit Judges.

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High Plains Harvest Church and Mark Hotaling (Plaintiffs) seek injunctive relief pending the court’s resolution of their interlocutory appeal of the district court’s denial of their motion for a preliminary injunction. We deny Plaintiffs’ motion because they have not made the required strong showing that they are likely to succeed on the merits of their appeal.

Plaintiffs are a church and its minister. Defendants are Colorado’s Governor and the Executive Director of the Colorado Department of Public Health and Environment (“CDPHE”), both sued in their official capacities. In their amended complaint, Plaintiffs

challenge as unconstitutional certain Executive and Public Health Orders (“Orders”) issued by Defendants related to the COVID-19 pandemic. They assert that a 50-person limitation on indoor worship services violates their free-exercise and free-speech rights under the First Amendment because Defendants have encouraged protests against police violence (the Protests), have exempted the Protests from the Orders’ restrictions on outdoor gatherings, and have favored the Protests’ message over Plaintiffs’ religious speech.

The district court denied Plaintiffs’ motion for a preliminary injunction, and Plaintiffs have filed an interlocutory appeal of that ruling. In their motion for an injunction pending appeal, Plaintiffs ask this court to enjoin Defendants from enforcing the Orders to the extent they prevent Plaintiffs from conducting indoor worship services with up to 150 persons following social distancing guidelines.

Tenth Circuit Rule 8.1 requires Plaintiffs to address the following factors: (1) “the likelihood of success on appeal”; (2) “the threat of irreparable harm if the . . . injunction is not granted”; (3) “the absence of harm to opposing parties if the . . . injunction is granted”; and (4) “any risk of harm to the public interest.” In ruling on a request for an injunction pending appeal

this court makes the same inquiry as it would when reviewing a district court’s grant or denial of a preliminary injunction. Thus, [the court] must consider, based on a preliminary record, whether the district court abused its discretion and whether the movant has demonstrated a clear and unequivocal right to relief.

*Homans v. City of Albuquerque*, 264 F.3d 1240, 1243 (10th Cir. 2001) (per curiam) (citation omitted).

Because Plaintiffs seek a type of injunction that is disfavored, we apply a heightened standard to their request for an injunction pending appeal. *See Schrier v. Univ. of Colo.*, 427 F.3d 1253, 1259 (10th Cir. 2005). “[A] party seeking such an injunction must make a strong showing both with regard to the likelihood of success on the merits and with regard to the balance of harms.” *Id.* at 1261 (internal quotation marks omitted).

In deciding Plaintiffs’ appeal, this court will review the district court’s denial of their motion for a preliminary injunction for an abuse of discretion. *See id.* at 1258. “The standard for abuse of discretion is high. The [movant] must show that the district court committed an error of law . . . or committed clear error in its factual findings.” *Id.* (internal quotation marks omitted). Plaintiffs contend that, because they assert claims under the First Amendment, the district court’s findings of constitutional facts are subject to de novo review. *See United States v. Friday*, 525 F.3d 938, 950 (10th Cir. 2008).

To decide whether Plaintiffs have made a strong showing that they are likely to succeed on the merits of their appeal, we apply the traditional constitutional tiered analysis to their First Amendment claims. In doing so, we are mindful that state officials may fight a global pandemic through emergency health orders. *See Jacobson v. Massachusetts*, 197 U.S. 11, 30-31 (1905); *see also S. Bay United Pentecostal Church v. Newsom*, 140 S. Ct. 1613 (2020) (Roberts, C.J., concurring).

In support of their free-exercise claim, Plaintiffs contend that the Orders are subject to strict scrutiny under the reasoning in *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531-32 (1993). They maintain that the Orders are not

neutral and generally applicable because Defendants have created a de facto exemption from the Orders for the Protests that amounts to a “system” of “individualized exemptions.” *Id.* at 537. In support of their free-speech claim, Plaintiffs contend that the Orders are subject to strict scrutiny under the reasoning in *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015). They maintain that the Orders are not content-neutral because Defendants have created a de facto content-based exemption from the Orders for the Protests.

We conclude that, even under de novo review of constitutional facts, Plaintiffs have not shown error in the district court’s factual finding that Defendants did not create a de facto exemption from the Orders for the Protests. Plaintiffs’ contention rests on public comments by Governor Polis and a guidance document issued by CDPHE regarding the Protests. But the Governor’s statements did not nullify the otherwise neutral and generally applicable Orders. *See Ill. Republican Party v. Pritzker*, 973 F.3d 760, 770 (7th Cir. 2020) (holding that a governor’s “press release expressing sympathy for the protests[,] . . . untethered to any legislative or executive rule-making process, cannot change the law”). Plaintiffs point to no evidence of an affirmative state action creating such an exemption from the Orders applicable to the Protests. Finally, we construe the Supreme Court’s denial of an injunction pending appeal in *Calvary Chapel Dayton Valley v. Sisolak*, 140 S. Ct. 2603 (2020) (Kagan, J.), as implicitly rejecting the argument that the Nevada Governor’s encouragement of protests during the pandemic resulted in a de facto exemption from public health orders.

Plaintiffs therefore fail to show that the Orders are subject to strict scrutiny, and they do not alternatively argue that they are likely to succeed on the merits of their First Amendment claims if the Orders are subject to any lesser level of scrutiny. Consequently, because Plaintiffs have not made the required strong showing of a likelihood of success on the merits of their appeal, we deny their motion for an injunction pending appeal.<sup>1</sup>

Entered for the Court

A handwritten signature in black ink, appearing to read 'Christopher M. Wolpert', written over a horizontal line.

CHRISTOPHER M. WOLPERT, Clerk

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<sup>1</sup> The United States District Court for the District of Colorado recently issued a stay precluding enforcement of the Governor's public health order against the Denver Bible Church. *Denver Bible Church v. Azar*, No. 20CV02362, 2020 WL 6128994 (D. Colo. Oct. 15, 2020). Another panel of this Court is considering the district court's orders in that case. We express no opinion on the merits of the district court's orders in that case other than to note that the arguments presented in *Denver Bible Church* differ substantially from those advanced in this case.

08/18/2020

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ORDER: This matter is before the Court on Plaintiffs' Motion for Injunction Pending Appeal [57](#) , seeking an injunction pending Plaintiffs' appeal from this Court's August 10, 2020 Order denying their motion for a preliminary injunction. The standards for these injunctions are similar, and the Court DENIES Plaintiffs' current request for the reasons stated in its previous Order. SO ORDERED by Judge Raymond P. Moore on 8/18/2020. (Text Only Entry)(rmsec ) (Entered: 08/18/2020)

EXHIBIT B

EXHIBIT C

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Judge Raymond P. Moore**

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

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.

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**ORDER**

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This matter is before the Court on Plaintiffs' motion for a preliminary injunction (ECF Nos. 35, 43). For the reasons below, the motion is denied.

**I. LEGAL STANDARD**

To obtain injunctive relief, the plaintiff must establish “(1) a substantial likelihood of prevailing on the merits; (2) irreparable harm unless the injunction is issued; (3) that the threatened injury outweighs the harm that the preliminary injunction may cause the opposing party; and (4) that the injunction, if issued, will not adversely affect the public interest.” *Diné Citizens Against Ruining Our Environment v. Jewell*, 839 F.3d 1276, 1281 (10th Cir. 2016) (quotation omitted). Because a preliminary injunction is an extraordinary remedy, the plaintiff's right to relief must be clear and unequivocal. *Schrier v. Univ. of Colo.*, 427 F.3d 1253, 1258 (10th Cir. 2005).

The fundamental purpose of preliminary injunctive relief is to preserve the relative positions of the parties until a trial on the merits can be held. *Id.* Further, this circuit has identified three types of injunctions that are specifically disfavored: “(1) preliminary injunctions that alter the status quo; (2) mandatory preliminary injunctions; and (3) preliminary injunctions that afford the movant all the relief that it could recover at the conclusion of a full trial on the merits.” *Id.* at 1258-59 (quotation omitted). To get a disfavored injunction, the moving party faces an even heavier burden of showing that the first and third factors above tilt in its favor. *Free the Nipple—Fort Collins v. City of Fort Collins*, 916 F.3d 792, 797 (10th Cir. 2019).

## II. BACKGROUND

In their original complaint, Plaintiffs alleged government orders in place at that time to address the COVID-19 pandemic violated their First Amendment rights. But after the United States Supreme Court denied an application for preliminary injunctive relief in *South Bay United Pentecostal Church v. Newsom*, 590 U.S. \_\_\_\_ (2020) (“*South Bay*”), Plaintiffs withdrew their original motion for a temporary restraining order and preliminary injunction. In his concurrence in *South Bay*, Chief Justice Roberts noted that, given the severity of the health crisis, “[t]he 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.” *Id.* at \_\_\_\_.

Chief Justice Roberts went on to state that, under the circumstances, politically accountable state officials “should not be subject to second-guessing by an unelected federal judiciary,” particularly where a party seeks emergency relief while local officials are actively shaping their response to changing facts on the ground. *Id.* at \_\_\_\_ (quotation omitted).

After *South Bay*, spontaneous and volatile mass protests following the death of George Floyd occurred in cities across America, including Denver. Plaintiffs then filed an amended



complaint, alleging Defendants “permitted and encouraged these protest gatherings while continuing to impose draconian restrictions on religious gatherings.” (ECF No. 34 at ¶ 8.) Plaintiffs now seek to recommence in-person church services in numbers greater than fifty. (ECF No. 34 at ¶ 42.) The Court has denied their motion for a temporary restraining order (ECF No. 41), and the motion for a preliminary injunction is now fully briefed (ECF Nos. 48, 49, 52) and ripe for review.

### III. ANALYSIS

In light of *South Bay* and the Supreme Court’s more recent ruling in *Calvary Chapel Dayton Valley v. Sisolak*, No. 19A1070, 2020 WL 4251360 (July 24, 2020) (“*Calvary Chapel*”), the Court finds Plaintiffs have not made a strong showing of a reasonable likelihood of success in this matter. For the present purpose of determining whether preliminary relief is appropriate, the Court finds this case is not materially different from these Supreme Court cases, both of which denied injunctive relief. Plaintiffs’ attempt to distinguish *Calvary Chapel* on the ground that the lower courts did not confront the issue of whether public officials discriminated against those plaintiffs in favor of protesters is unavailing. If officials can impose more severe restrictions on religious services than they can on bars, casinos, and gyms, it is difficult to see how the recent mass protests, which appear to have less in common with religious services than the activities at issue in *Calvary Chapel*, present circumstances where it is probable that the government’s conduct is unconstitutional. Further, in his dissent in *Calvary Chapel*, Justice Alito addressed the notion that public officials might engage in viewpoint discrimination by expressing support for protesters while limiting attendance at church services, but that is not what the Court held. *See* 2020 WL 4251360, at \*4 (Alito, J., dissenting).

As mentioned above, Plaintiffs initially sought the right to conduct religious services involving up to fifty persons while following CDC guidelines. (ECF No. 1, Complaint at ¶¶ 26-29.) That is permissible under the latest Executive Order. (ECF No. 48-3, Eighth Am. Public Health Order at ¶ II.M.) Plaintiffs now seek to have no public health restrictions whatsoever applied to them—whether expressed in terms of numbers of attendees, masks, social distancing, or otherwise. Plaintiffs do not seek such relief based on differences between the restrictions placed on them and those placed on comparable indoor secular establishments. Instead, Plaintiffs essentially contend that because Defendants did not respond to the recent mass protests by wading into the crowd of demonstrators and arresting or citing people for public health violations, they may not now enforce the existing Executive Orders against Plaintiffs.

Despite the myriad of differences between the protests and Plaintiffs’ desired services (including indoor vs. outdoor, emergency vs. less exigent circumstances being faced by law enforcement, and other distinctions), Plaintiffs would have the Court preclude the state from enforcing public health orders—even as the COVID-19 pandemic again demonstrates its persistence and resilience—merely because the state addressed an unprecedented and potentially explosive situation with a modicum of restraint. Contrary to what Plaintiffs contend, the record evidence does not establish that the state encouraged protests or created de facto exemptions. And the state did not lose its authority to manage a public health emergency because of its response to the protests. And so, based on Plaintiffs’ arguments and the record evidence, the Court has little trouble finding, at the very least, that the burden of establishing a substantial likelihood of prevailing on the merits has not been met.

**IV. CONCLUSION**

Accordingly, the Court DENIES Plaintiffs' request for a preliminary injunction (ECF Nos. 35, 43).

DATED this 10th day of August, 2020.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Raymond P. Moore", written over a horizontal line.

RAYMOND P. MOORE  
United States District Judge

EXHIBIT D

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Judge Raymond P. Moore**

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

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.

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**ORDER**

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This matter is before the Court on Plaintiffs' Renewed Motion for Temporary Restraining Order and for Preliminary Injunction. (ECF No. 35.) At the Court's direction, Defendants have filed a response to the motion. (ECF No. 39.) The Court denies the request for a temporary restraining order and sets a briefing schedule on the request for a preliminary injunction.

**I. LEGAL STANDARDS**

To obtain a temporary restraining order or injunctive relief in any other form, the plaintiff must establish "(1) a substantial likelihood of prevailing on the merits; (2) irreparable harm unless the injunction is issued; (3) that the threatened injury outweighs the harm that the preliminary injunction may cause the opposing party; and (4) that the injunction, if issued, will not adversely affect the public interest." *Diné Citizens Against Ruining Our Environment v. Jewell*, 839 F.3d 1276, 1281 (10th Cir. 2016) (quotation omitted). Because a preliminary

injunction is an extraordinary remedy, the plaintiff's right to relief must be clear and unequivocal. *Schrier v. Univ. of Colo.*, 427 F.3d 1253, 1258 (10th Cir. 2005).

The fundamental purpose of preliminary injunctive relief is to preserve the relative positions of the parties until a trial on the merits can be held. *Id.* Further, this circuit has identified three types of injunctions that are specifically disfavored: “(1) preliminary injunctions that alter the status quo; (2) mandatory preliminary injunctions; and (3) preliminary injunctions that afford the movant all the relief that it could recover at the conclusion of a full trial on the merits.” *Id.* at 1258-59 (quotation omitted). To get a disfavored injunction, the moving party faces an even heavier burden of showing that the first and third factors above tilt in its favor. *Free the Nipple—Fort Collins v. City of Fort Collins*, 916 F.3d 792, 797 (10th Cir. 2019).

## II. BACKGROUND

Plaintiffs alleged in their original complaint that government orders aimed at addressing the COVID-19 pandemic in place at that time<sup>1</sup> violated their First Amendment rights. But after the United States Supreme Court denied an application for preliminary injunctive relief in a case substantially similar to theirs, *see S. Bay United Pentecostal Church v. Newsom*, No. 19A1044, 2020 WL 2813056 (2020), Plaintiffs withdrew their original motion for a temporary restraining order and preliminary injunction. In the days that followed, thousands of people began to gather in Denver and other cities in Colorado to protest police violence. Plaintiffs then filed an amended complaint, alleging that Defendants “permitted and encouraged these protest gatherings while continuing to impose draconian restrictions on religious gatherings.” (ECF No. 34 at ¶ 8.) Plaintiffs seek to recommence in-person church services in numbers greater than fifty. (ECF No. 34 at ¶ 42.) They have now filed a renewed motion for a temporary restraining order and a

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<sup>1</sup> Then, Plaintiffs were seeking to hold in-person religious services for up to fifty people, which is now permissible under the public health orders currently in place.

preliminary injunction, again seeking to enjoin Defendants from enforcing public health orders that limit their in-person church services.

### III. ANALYSIS

Plaintiffs seek a disfavored injunction that would grant them essentially all the relief they request in their amended complaint, and therefore they have a high burden to meet. On the current record and in light of the Supreme Court's recent ruling in *South Bay United Pentecostal Church*, the Court finds Plaintiffs have not made a strong showing of a reasonable likelihood of success in this matter.

Citing Chief Justice Roberts' concurrence in *South Bay United Pentecostal Church*, Plaintiffs argue that "the key to the Court's decision, at least according to the Chief Justice, was that California was treating religious gatherings in a way that was comparable to 'comparable secular gatherings,' such as concerts movies, spectator sports, etc." (ECF No. 35 at 2.) But Plaintiffs' reliance on that concurrence is misplaced here. First, there is no evidence in the record that would support a finding that the outdoor protests are "comparable secular gatherings" to the indoor, in-person church services Plaintiffs seek to provide. Plaintiffs' conclusory assertion that "from an epidemiological perspective [the protests] were far more intense than any religious service" (*id.* at 2-3) is insufficient to establish a likelihood of success on the merits. And the notion that the non-enforcement of social distancing during a protest means that the State is engaged in a variety of constitutional misconduct directed at religious institutions is far from apparent. Indeed, as noted in the Chief Justice's concurrence, "[t]he 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," and "[t]he notion that it is 'indisputably clear' that the Government's limitations are unconstitutional seems quite

improbable.” *S. Bay United Pentecostal Church*, 2020 WL 2813056, at \*1-2 (Roberts, C.J., concurring).

Nor have Plaintiffs adduced evidence that Defendants permitted or encouraged the protests. Plaintiffs contend that they are “prepared to submit substantial additional evidence” on this issue (ECF No. 40 at 1), and the Court will provide an opportunity for them to do so, albeit not in a TRO hearing as Plaintiffs request. On the current record, however, the assertion that Defendants are treating Plaintiffs differently from comparable secular gatherings is “improbable.” For present purposes, Plaintiffs have failed to establish a clear and unequivocal right to the extraordinary relief they seek.

#### **IV. CONCLUSION**

Accordingly, the Court DENIES Plaintiffs’ request for a temporary restraining order and sets forth the following briefing schedule on their request for a preliminary injunction:

- (1) Plaintiffs shall file any supplementary materials regarding the nature of the protests and Defendants’ alleged encouragement of those protests on or before June 30, 2020;
- (2) Defendants shall file a response within 21 days of such filing, or by July 21, 2020, whichever occurs sooner; and
- (3) Plaintiffs shall file a reply within 7 days of Defendants’ response.

The Court DENIES Plaintiffs’ motion for a hearing (ECF No. 40).

DATED this 16th day of June, 2020.

BY THE COURT:



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RAYMOND P. MOORE  
United States District Judge

EXHIBIT E

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

**Civil Action No. 20-cv-1480-RM-MEH**

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.

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**VERIFIED FIRST AMENDED COMPLAINT**

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Plaintiffs submit the following Verified First Amended Complaint:

**I. AUTHORITY FOR AMENDMENT**

1. Federal Rule of Civil Procedure 15(a)(a) provides that a party may amend its pleading once as a matter of course within 21 days after serving it. Service in this matter was accomplished on May 27, 2020. This First Amended Complaint is filed within 21 days of May 27, 2020.

**II. *SOUTH BAY UNITED PENTECOSTAL CHURCH V. NEWSOM***

2. Plaintiffs filed their original Complaint on May 25, 2020. In that Complaint Plaintiffs alleged that the State had violated their rights under the First Amendment because the government orders in place at the time burdened Plaintiffs' sincerely held religious beliefs while at the same time setting up a pervasive system of individualized exemptions that



permitted other similarly situated businesses or non-religious entities (such as grocery stores; produce stands; gas stations; convenience stores; marijuana dispensaries; liquor stores; gun stores; funeral homes, airlines, mining operations, hardware stores; laundromats; banks; law offices; and accounting offices) to continue operations while prohibiting faith-based gatherings, such as Plaintiffs' church and religious gatherings, from operating.

3. Four days later, on May 29, 2020, the United States Supreme Court entered an order in *South Bay United Pentecostal Church v Newsom*, WL 2813056 (U.S. 2020), in which the Court denied an application for preliminary injunctive relief in a California case in which the plaintiffs made claims similar to the claims Plaintiffs made in their May 25 Complaint.

4. Accordingly, on May 30, 2020 Plaintiffs withdrew their then pending motion for temporary restraining order and preliminary injunction.

5. In his concurrence in that order Chief Justice Roberts wrote that denial of preliminary injunctive relief was appropriate because

[a]lthough California's guidelines place restrictions on places of worship, those restrictions appear consistent with the Free Exercise Clause of the First Amendment. Similar or more severe restrictions apply to comparable secular gatherings, including lectures, concerts, movie showings, spectator sports, and theatrical performances, where large groups of people gather in close proximity for extended periods of time.

*Id.*

6. Thus, the key to the Court's decision, at least according to the Chief Justice, was that California was treating religious gatherings in a way that was comparable to "comparable secular gatherings," such as lectures concerts, movies, spectator sports, etc.

7. After Plaintiffs withdrew their motion for preliminary relief the factual landscape shifted dramatically. In the days that followed thousands of protesters gathered in

Denver and other cities in Colorado. These thousands of protesters marched and stood shoulder-to-shoulder for hours on end, all the while ignoring any semblance of social distancing. Some of these protests occurred literally outside of Governor Polis’s office at the Colorado Capitol Building. Far from prohibiting these gatherings – which from an epidemiological perspective were far more intense than any religious service – Governor Polis and Director Ryan permitted and even encouraged the gatherings.

8. Any argument that the State may have had that it was treating religious gatherings in a way that was comparable to “comparable secular gatherings” evaporated when Defendants permitted and encouraged these protest gatherings while continuing to impose draconian restrictions on religious gatherings.

9. Accordingly, Plaintiffs are filing this First Amended Complaint and renewing their request for a temporary restraining order and preliminary injunction.

### III. INTRODUCTION

10. This is an image from a recent protest literally outside of Governor Polis's office at the Colorado State Capitol Building:



11. Today in Colorado 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. But if more than 50 people meet to worship God in a small rural church, they do so at the risk of being fined and imprisoned. Plaintiffs call upon the Court to come to their aid, vindicate their religious liberties, free speech rights and associational rights under the First Amendment to the United States Constitution, and remedy the surreal state of affairs in which they inexplicably find themselves.

#### **IV. PARTIES**

12. High Plains Harvest Church (“HPHC” or the “Church”) is a small church located at 108 1st Street, Ault, Colorado 80610. HPHC is a religious nonprofit organization. HPHC brings this action on its member’s behalf. HPHC has associational standing because (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to its purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit. Each of HPHC’s members would have standing to assert claims for breach of their constitutional rights as set forth herein. The interest HPHC seeks to protect, especially the interest in the free exercise of religion, is germane to HPHC’s purpose. The claims asserted herein do not require the participation of individual members. HPHC seeks a declaration, injunction, and other prospective relief, and it can reasonably be supposed that the remedies, if granted, will inure to the benefit of those members of HPHC actually injured.

13. Plaintiff Mark Hotaling (“Hotaling”) is a resident of Colorado.

14. Defendant Jared Polis (“Governor Polis”) is the Governor of Colorado. Governor Polis is sued in his official capacity only. All of Governor Polis’s actions described herein were taken under color of law.

15. Defendant Jill Hunsaker Ryan (“Director Ryan”) is the Executive Director of the Colorado Department of Public Health and Environment. Director Ryan is sued in her official capacity only. All of Director Ryan’s actions described herein were taken under color of law.

#### **V. JURISDICTION AND VENUE**

16. This action arises under the Constitution and laws of the United States, and is brought pursuant to Title 42 U.S.C. § 1983.

17. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343.

18. The Court may declare the legal rights and obligations of the parties in this action pursuant to 28 U.S.C. § 2201 because the action presents an actual controversy within the Court's jurisdiction.

19. Jurisdiction supporting Plaintiffs' claim for attorney's fees and costs is conferred by 42 U.S.C. § 1988.

20. Venue is proper in the District of Colorado pursuant to 28 U.S.C. § 1391(b). All of the events alleged herein occurred within the State of Colorado (the "State"), and all of the parties were residents of the State at the time of the events giving rise to this litigation.

## **VI. FACTUAL BACKGROUND**

21. HPHC's vision is to be a Christ-centered, rural, regional church that makes a genuine difference in the hearts of people throughout northern Colorado. The Church seeks to create an environment where each person is: cultivating daily, life-changing intimacy with the Savior; experiencing biblical community with others in the body of Christ; using their time, talents, and treasures to further God's kingdom; engaging in intentional discipleship and ministry; and bringing the Gospel into their sphere of influence with word and action.

22. Hotaling is a former Navy SEAL and a service-disabled veteran. After returning home from the Navy, Hotaling followed the Lord's call to serve Him full-time. Hotaling is a devout Christian and a pastor in the Church. Until the recent COVID-19 outbreak, Hotaling frequently attended and/or led services at the Church. He typically attended and/or led three to

four services and/or other religious gatherings per week. Hotaling has a sincerely held religious belief that in-person attendance at church is central to his faith.

23. In response to the presence of COVID-19 in Colorado, on June 1, 2020, Governor Polis issued his so-called “Safer at Home and in the Vast, Great Outdoors” order, Executive Order, D 2020 091 (the “Executive Order”). A copy of the Executive Order is attached as Exhibit A.

24. In the Executive Order Governor Polis directed Director Ryan to issue a public health order to: “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.”

25. In accordance with the Executive Order, on June 5, 2020 Director Ryan issued her Sixth Amended Public Health Order 20-28 Safer at Home and in the Vast, Great Outdoors (the “PHO”). A copy of the PHO is attached as Exhibit B.

26. The PHO prohibits all public and private gatherings greater than ten individuals except for “Necessary Activities.” PHO I. C. There is no numerical limit on the number of persons who may be present when “Necessary Activities” are conducted. Religious worship services are not considered Necessary Activities under the PHO.

27. “Necessary Activities” do include activities associated with “Critical Businesses.” PHO III. A. 4. “Critical Businesses” are listed in Appendix F to the PHO.

28. The PHO permits “houses of worship” to open so long as the number of worshipers in attendance does not 50% of the posted occupancy limit or 50 people, whichever is **lower**.

29. The PHO states that it “will be enforced by all appropriate legal means,” and that “[f]ailure to comply with this order could result in penalties, including jail time, and fines . . .”

PHO, VI. A previous version of the PHO invoked the authority of C.R.S. § 25-1-114 to impose criminal penalties.

30. Director Ryan has also issued “Guidance for Places of Worship” to implement the Executive Order (the “Guidance”). A copy of the Guidance is attached as Exhibit C.

31. The Executive Order, the PHO and the Guidance shall be referred to herein collectively as the “Orders.”

32. Beginning after May 25, 2020 and continuing through the present time, thousands of protesters have gathered in Denver, including prominent protests in front of the Colorado State Capitol Building.

33. The protestors have stood literally shoulder-to-shoulder while they shouted in unison.

34. The protestors have ignored even a pretense of social distancing.

35. One need not be an epidemiologist to know that these gatherings were epidemiologically far more intense than any religious service. This conclusion is common sense.

36. Governor Polis has not only permitted these protests to occur, he has actively encouraged them.

37. Director Ryan has not only permitted these protests to occur, she has actively encouraged them.

38. At the same time they are permitting and encouraging these gatherings of thousands, Defendants continue to limit gatherings for worship services to 50 people.

39. The Bible commands Christians not to forsake the gathering together of believers. Hebrews 10:24-25. In-person corporate worship is a fundamental tenet of Christian practice and has been for nearly 2,000 years.

40. HPHC and its members, including Hotaling, have a sincerely held religious belief that the physical corporate gathering of believers is a central element of religious worship commanded by the Lord.

41. It is a substantial burden on the religious exercise of HPHC and its members, including Hotaling, if they cannot meet for in-person corporate worship as a body of believers in numbers greater than 50.

42. HPHC in furtherance of the sincerely held religious beliefs of its members, desires to recommence in-person worship services in numbers greater than 50. The capacity of the church's sanctuary is approximately 150.

43. In all services, HPHC and Hotaling will following CDC guidelines for faith communities. *See Centers for Disease Control and Prevention Interim Guidance for Communities of Faith*, including:

- Encouraging staff and congregants to maintain good hand hygiene
- Encouraging use of cloth face coverings among staff and congregants
- Cleaning and disinfecting frequently touched surfaces at least daily and shared objects in between uses
- Promoting social distancing at services and other gatherings, ensuring that clergy, staff, choir, volunteers and attendees at the services follow social distancing throughout services



44. Hotaling and HPHC also intend to follow the social distancing standards set forth in Director Ryan’s Guidance.

45. To the best of Hotaling’s knowledge, no member of HPHC has COVID-19.

46. The Church and Hotaling reasonably fear prosecution, including fines, arrest, and jail, if they proceed with this plan to meet for in-person corporate worship in a group of more than ten worshipers.

47. Governor Polis and Director Ryan have actively enforced the Orders and declared their intention to continue to do so.

**VII. FIRST CLAIM FOR RELIEF**  
**42 U.S.C. § 1983 – Violation of First Amendment Freedom of Religion**

48. Plaintiffs hereby incorporate all other paragraphs of this Complaint as if fully set forth herein.

49. The Free Exercise Clause of the First Amendment to the United States Constitution, as applied to the states by the Fourteenth Amendment, prohibits the State from abridging Plaintiffs’ rights to free exercise of religion.

50. Plaintiffs have sincerely held religious beliefs that the Bible is the infallible, inerrant word of the Lord Jesus Christ and they are to follow its teachings.

51. Plaintiffs have sincerely held religious beliefs, rooted in Scripture’s commands (e.g., Hebrews 10:25), that followers of Jesus Christ are not to forsake the assembling of themselves together, and that they are to do so even more in times of peril and crisis. Indeed, the entire purpose of the Church (in Greek “*ekklesia*,” meaning “assembly”) is to assemble together Christians to worship Almighty God.

52. The Orders, as applied, impermissibly burden Plaintiffs’ sincerely held religious beliefs, compel Plaintiffs to either change those beliefs or to act in contradiction to them, and

force Plaintiffs to choose between the teachings and requirements of their sincerely held religious beliefs in the commands of scripture and the State's regulations.

53. The Orders, as applied, are neither neutral nor generally applicable, but rather discriminate against the religious beliefs, speech, assembly, and viewpoint of Plaintiffs.

54. The State lacks a compelling, legitimate, or rational interest in the Orders' application of different standards for churches and faith-based gatherings than those applicable to similar or even more intensive secular gatherings such as the protests that have been permitted and encouraged by Defendants.

55. Even if the Orders' restriction on faith-based gatherings were supported by a compelling interest, they are not the least restrictive means to accomplish the government's purported interest.

56. The Orders, as applied, fail to accommodate Plaintiffs' sincerely held religious beliefs.

57. The Orders, as applied, burden Plaintiffs' sincerely held religious beliefs while at the same time setting up a pervasive system of individualized exemptions that permit other similarly situated businesses or non-religious entities to continue operations while prohibiting faith-based gatherings, such as Plaintiffs' church and religious gatherings, from operating.

58. The Orders, as applied, burden Plaintiffs' sincerely held religious beliefs while at the State has permitted and encouraged similar or even more intensive secular gatherings of thousands while prohibiting faith-based gatherings, such as Plaintiffs' church and religious gatherings, from operating in numbers greater than 50.

59. The Orders, as applied, have caused, are causing, and will continue to cause Plaintiffs immediate and irreparable harm, and actual and undue hardship.

60. Plaintiffs have no adequate remedy at law to correct the continuing deprivation of their liberties.

61. Plaintiffs respectfully pray for the relief against the State as hereinafter set forth in their prayer for relief.

**VIII. SECOND CLAIM FOR RELIEF**  
**42 U.S.C. § 1983 – Violation of First Amendment Free Speech Rights**

62. Plaintiffs hereby incorporate all other paragraphs of this Complaint as if fully set forth herein.

63. The Orders violate Plaintiffs' freedom of speech by prohibiting them from engaging in religious speech through their church services which occur exclusively on private property.

64. The Orders give government officials unbridled discretion with respect to enforcement of the Orders and the imposition of any penalty, making the Orders susceptible to both content- and viewpoint-based discrimination.

65. The government has abused its discretion by permitting secular gatherings of thousands to engage in officially approved speech while at the same time prohibiting religious gatherings greater than 50 people to engage in non-officially approved speech.

66. The State's discrimination against Plaintiffs' religious speech does not serve any legitimate, rational, substantial, or compelling governmental interest.

67. The State has alternative, less restrictive means to achieve any interest that it might have.

68. The Orders violate the Free Speech Clause of the First Amendment to the United States Constitution, as applied.

69. In the absence of declaratory and injunctive relief, Plaintiffs will be irreparably harmed.

70. Plaintiffs respectfully pray for the relief against the State as hereinafter set forth in their prayer for relief.

**IX. THIRD CLAIM FOR RELIEF**

**42 U.S.C. § 1983 – Violation of First Amendment Freedom of Association/Assembly**

71. Plaintiffs hereby incorporate all other paragraphs of this Complaint as if fully set forth herein.

72. The First Amendment prohibits the State from violating Plaintiffs' right to peaceably assemble.

73. The Orders, as applied, violates Plaintiffs' right to peaceably assemble because the ban on in-person services greater than 50 (while allowing more intense secular gatherings in the thousands) does not serve any legitimate, rational, substantial, or compelling governmental interest.

74. In addition, the State has alternative, less restrictive means to achieve any interest that it might have.

75. The Orders violate the right to assemble under the First Amendment to the United States Constitution, as applied.

76. In the absence of declaratory and injunctive relief, Plaintiffs will be irreparably harmed.

77. Plaintiffs respectfully pray for the relief against the State as hereinafter set forth in their prayer for relief.

**X. FOURTH CLAIM FOR RELIEF**  
**42 U.S.C. § 1983 – Violation of Right to**  
**Equal Protection Under the Fourteenth Amendment**

78. Plaintiffs hereby incorporate all other paragraphs of this Complaint as if fully set forth herein.

79. The Fourteenth Amendment to the United States Constitution guarantees Plaintiffs the right to equal protection under the law.

80. The Orders, as applied, are an unconstitutional abridgment of Plaintiffs' right to equal protection because in the Orders the State treats Plaintiffs differently from other similarly situated secular gatherings on the basis of the exercise of their fundamental rights.

81. The Orders, as applied, impermissibly discriminate between non-religious gatherings and religious or faith-based gatherings.

82. The State lacks a compelling, legitimate, or rational interest in the Orders' application of different standards for churches and faith-based gatherings than those applicable to non-religious gatherings.

83. The Orders, as applied, are not the least restrictive means to accomplish any permissible government purpose sought to be served.

84. The Orders, as applied, do not have a rational basis.

85. The Orders, as applied, are irrational and unjustifiable and impose irrational and unjustifiable restrictions on Plaintiffs' religious or faith-based gatherings.

86. The Orders, as applied, have caused, are causing, and will continue to cause Plaintiffs immediate and irreparable harm, and actual and undue hardship.

87. Plaintiffs have no adequate remedy at law to correct the continuing deprivation of their most cherished liberties.

88. Plaintiffs respectfully pray for the relief against the State as hereinafter set forth in their prayer for relief.

### **XI. PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for relief as follows:

A. That the Court issue a Temporary Restraining Order restraining and enjoining Governor Polis, Director Ryan and all persons in active concert or participation with them, from enforcing, attempting to enforce, threatening to enforce, or otherwise requiring compliance with the Orders or any other order to the extent any such order prohibits in-person services at the Church greater than 50.

B. That the Court issue a Preliminary Injunction pending trial, and a Permanent Injunction upon judgment, restraining and enjoining Governor Polis, Director Ryan and all persons in active concert or participation with them, from enforcing, attempting to enforce, threatening to enforce, or otherwise requiring compliance with the Orders or any other order to the extent any such order prohibits in-person services at the Church greater than 50.

C. That the Court render a Declaratory Judgment declaring that the Orders as applied by the State are unconstitutional under the United States Constitution and further declaring that the State has violated Plaintiffs' rights to free exercise of religion, right to equal protection of the laws, right to assembly and right to free speech.

D. That the Court declare Plaintiffs are prevailing parties and award Plaintiffs the reasonable costs and expenses of this action, including a reasonable attorney's fee, in accordance with 42 U.S.C. § 1988.

E. That the Court grant such other and further relief as the Court deems equitable and just under the circumstances.

*/s/ Barry K. Arrington*

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Barry K. Arrington  
Arrington Law Firm  
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Suite 830  
Denver, Colorado 80210  
Voice: (303) 205-7870  
Fax: (303) 463-0410  
Email: [barry@arringtonpc.com](mailto:barry@arringtonpc.com)  
Attorney for Plaintiffs

**VERIFICATION**

I, Mark Hotaling, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury that I have reviewed the foregoing Complaint, that I am competent to testify in this matter, that the facts contained therein are true and correct, and such allegations are based on information personally known and observed by me.

Executed on June 10, 2020

  
\_\_\_\_\_  
Mark Hotaling



*/s/ Barry K. Arrington*

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Attorney for Plaintiffs

### **CERTIFICATE OF SERVICE**

I hereby certify that on June 10, 2020, I electronically filed a true and correct copy of the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing via email to the following parties of record:

Natalie Hanlon Leh  
Eric R. Olson  
W. Eric Kuhn  
Emily B. Buckley  
Ryan K. Lorch  
Office of the Colorado Attorney General  
Ralph L. Carr Judicial Center  
1300 Broadway, 10th Floor  
Denver, Colorado 80203

*/s/ Barry K. Arrington*

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Barry K. Arrington

JARED POLIS  
GOVERNOR



136 STATE CAPITOL  
DENVER, COLORADO 80203

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

## 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.

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- 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

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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

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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.

**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 that reads "Jared Polis". The signature is fluid and cursive, written over a light blue rectangular background.

Jared Polis  
Governor





**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



Sixth Amended Public Health Order 20-28 Safer at Home  
June 5, 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 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;

Sixth Amended Public Health Order 20-28 Safer at Home  
June 5, 2020

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**

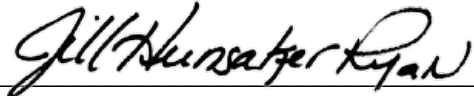
This Order will be enforced by all appropriate legal means. Local authorities are encouraged to determine the best course of action to encourage maximum compliance. Failure to comply with this order could result in penalties, including jail time, and fines, and may also be subject to discipline on a 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 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 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;
  - b. 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.<sup>1</sup>
  2. The practice must implement strict infection control policies as recommended by the CDC.<sup>2</sup>
  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;

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

<sup>2</sup> <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 urgency<sup>3</sup>;
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.

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<sup>3</sup> 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](#)

Sixth Amended Public Health Order 20-28 Safer at Home  
June 5, 2020

- 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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June 5, 2020

## **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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June 5, 2020

referred to state or company support services.



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Department of Public  
Health & Environment



**COLORADO**  
State Emergency  
Operations Center

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# Safer at Home: Places of Worship

[Home \(/home\)](#)

[About COVID-19 \(/about-covid-19\)](#)

[People at higher risk for severe illness](#)



[COVID-19 & well-child checkups \(/well-child\)](#)

[Do you have symptoms?](#)



[Prevent the spread of COVID-19](#)



[Isolation & quarantine](#)



[Safer at Home](#)



[Campgrounds \(/safer-at-home/campgrounds\)](#)

[Child care facilities \(/safer-at-home/safer-at-home-child-care-facilities\)](#)

[Children's day camps & youth sports camps \(/safer-at-home/childrens-day-camps-youth-sports-camps\)](#)

[Education P-12 \(/safer-at-home/safer-at-home-education-p-12\)](#)

[Field services & real estate \(/safer-at-home/safer-at-home-field-services-and-real-estate\)](#)

[Office-based businesses \(/safer-at-home/safer-at-home-office-based-business\)](#)

[Outdoor recreation \(/safer-at-home/safer-at-home-outdoor-recreation\)](#)

[Higher education \(/safer-at-home/safer-at-home-higher-education\)](#)

[Limited health care settings \(/safer-at-home/safer-at-home-limited-health-care-settings\)](#)

[Non-critical manufacturing \(/safer-at-home/safer-at-home-non-critical-manufacturing\)](#)

[Nursing homes & congregate care facilities \(/safer-at-home/safer-at-home-nursing-homes-and-congregate-care-facilities\)](#)

[Personal recreation \(/safer-at-home/recreation\)](#)

[Personal services \(/safer-at-home/safer-at-home-personal-services\)](#)

[Places of worship \(/worship-guidance\)](#)

[Restaurants & food services \(/safer-at-home/restaurants-food-services\)](#)

[Retail](#)



[Short-term rentals \(/safer-at-home/safer-at-home-short-term-rentals\)](#)

[Best practices for all businesses \(/safer-at-home/safer-at-home-best-practices-for-all-businesses-essential-and-non-essential\)](#)

[Keep employees & customers safe \(/keep-employees-customers-safe\)](#)

[Safer at Home FAQ \(/safer-at-home-faq\)](#)

[Public health & executive orders](#)



[Health Equity Response Team](#)



[Reducing fear and stress](#)



LPHAs and health care providers &gt;

General Questions and Answers (/frequently-asked-questions-faq)

Communication resources &gt;

Laboratory services (external link) (<https://www.colorado.gov/pacific/cdphe/lab>)

State recovery &amp; assistance &gt;

Data &gt;

Blog (/blog)

Updated June 4, 2020, 3:59 p.m.

Available languages (last updated 06/04/20): Español | Tiếng Việt | 中文 | Soomaali | العربية | नेपाली

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 for those events still must follow mass gathering limitations.

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 \(https://docs.google.com/forms/d/e/1FAIpQLScc-4qr2I37dIX10wflCzLbmeSV4uzXRaotOB4wiKEZH5IWuQ/viewform?usp=sf\\_link\)](https://docs.google.com/forms/d/e/1FAIpQLScc-4qr2I37dIX10wflCzLbmeSV4uzXRaotOB4wiKEZH5IWuQ/viewform?usp=sf_link).

On this page: [Capacity limitations](#) | [Physical/social distancing](#) | [Cleaning practices](#) | [Masks](#) | [Pre-registration](#) | [Employees and volunteers](#) | [Directing movement of people \(entry / exit Doors\)](#) | [Create a “touchless” experience](#) | [Presenting speakers/singers/choirs](#) | [Children’s and youth programming](#) | [Outdoor services](#) | [Security](#) | [Muslim ablution](#) | [Religious studies, small groups, and meetings](#) | [Food pantries and other services](#) | [Other sacred ceremonies](#) | [Additional comments](#)

## 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 \(https://covid19.colorado.gov/cleaning-guidance\)](https://covid19.colorado.gov/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 \(https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/\)](https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/).

## Strongly recommended guidelines

### Masks

## EXHIBIT 2



- Follow the Colorado Department of Public Health and Environment's [Guidance for wearing masks/cloth face coverings](https://covid19.colorado.gov/mask-evidence) (<https://covid19.colorado.gov/mask-evidence>).
- 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](https://covid19.colorado.gov/symptom-screening) (<https://covid19.colorado.gov/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](https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html) (<https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>) should go home. [Sample Screening Form](https://drive.google.com/file/d/1p6SStp1deNzVVjlgaL937f06jHWT9VDM/view) (<https://drive.google.com/file/d/1p6SStp1deNzVVjlgaL937f06jHWT9VDM/view>).
- Masks and gloves must be worn.
- Training should be provided on sanitation. If anyone has symptoms, follow [workplace outbreak guidelines](https://drive.google.com/file/d/107dLRAJaD4ZtNJGy8geSf0UvngesvKYd/view) (<https://drive.google.com/file/d/107dLRAJaD4ZtNJGy8geSf0UvngesvKYd/view>).

## 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 worshippers 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 child care centers** (<https://covid19.colorado.gov/safer-at-home/safer-at-home-child-care-facilities>) 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** (<https://drive.google.com/file/d/107dLRAJaD4ZtNJGy8geSf0UvngeSvKYd/view>) 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.

## Contact

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**[COVID-19-related issues & concerns \(https://covid19.colorado.gov/CovidConcerns\)](https://covid19.colorado.gov/CovidConcerns)**

**[Colorado Crisis Services \(https://coloradocrisisservices.org/\)](https://coloradocrisisservices.org/)**

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 \(https://www.211colorado.org/\)](https://www.211colorado.org/)**

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 \(https://www.colorado.gov/pacific/cdphe/co-help\)](https://www.colorado.gov/pacific/cdphe/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

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**Resources & info**

Media line (for media only): 303-900-2849

**CDPHE main website** (<https://colorado.gov/cdphe>).

**Colorado Emergency Management** (<http://www.coemergency.com/>).

**Stay at home Colorado guide** (<https://stayathomeco.colorado.gov/>).

**Help Colorado Now** (<http://helpcoloradonow.org>) - Volunteer, donate, contribute, apply for funding.

**State resource for COVID-19 information** (<https://covid.colorado.gov/>).

**OnwardCO.org** ([https://urldefense.proofpoint.com/v2/url?u=http-3A\\_onwardco.org&d=DwMFaQ&c=sdnEM9SRGFuMt5z5w3AhsPNahmNicq64TgF1JwNR0cs&r=tKhU0U\\_L2xbjslo\\_eJnBsIU8HnLQ6GQZw39EuXQSA&m=dXF1XqmnyYaKrsVZJ2pb30IHqibGVNQgDMdDn4kQ&s=LHbqsUuqwFec-ngL7MhT1soU14t2zdketeXX6EflmtU&e=](https://urldefense.proofpoint.com/v2/url?u=http-3A_onwardco.org&d=DwMFaQ&c=sdnEM9SRGFuMt5z5w3AhsPNahmNicq64TgF1JwNR0cs&r=tKhU0U_L2xbjslo_eJnBsIU8HnLQ6GQZw39EuXQSA&m=dXF1XqmnyYaKrsVZJ2pb30IHqibGVNQgDMdDn4kQ&s=LHbqsUuqwFec-ngL7MhT1soU14t2zdketeXX6EflmtU&e=)) - One-stop resource for Coloradans impacted by job loss to connect with life essentials, training, and jobs.

**Request a website change** (<https://forms.gle/PLiDz5cQ4tjA3Q2R9>).

If you have symptoms and think you have been exposed, call a health care provider.

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Colorado Emergency Management

 ([https://www.facebook.com/COEmergency/?\\_\\_xts\\_\\_\[0\]=68.ARAHzIPINUNeZ27ayQDMfbLehNYVIMrg7xfT8j-8aN98mdPRoBbPnmktcLMtKl-wokLnQaemEUD3PdU-0DQcGtcf](https://www.facebook.com/COEmergency/?__xts__[0]=68.ARAHzIPINUNeZ27ayQDMfbLehNYVIMrg7xfT8j-8aN98mdPRoBbPnmktcLMtKl-wokLnQaemEUD3PdU-0DQcGtcf))  
 (<https://twitter.com/COEmergency>)

Available languages

[https://drive.google.com/open?id=1wvUvHmRb1EgsjTO\\_tMebKjbJAryWs3ol](https://drive.google.com/open?id=1wvUvHmRb1EgsjTO_tMebKjbJAryWs3ol) (Spanish) | <https://drive.google.com/open?id=1kuJOG5xvziW8QnGlatjYXXKg946kWSkr> (Vietnamese) |

<https://drive.google.com/open?id=1uDHaqlqq5o8TqXXsesEkpqyfZGmpD-G8> (Somali) | [https://drive.google.com/open?id=11zakkcFDevz2ieTO31SvQ\\$ey9C2\\_4vop](https://drive.google.com/open?id=11zakkcFDevz2ieTO31SvQ$ey9C2_4vop) (Simplified Chinese) |

(Arabic) [https://urldefense.proofpoint.com/v2/url?u=https-3A\\_drive.google.com\\_open-3Fid-3D1ymjzG3RB7xOWLP09mXTj6l57z5kYosGG&d=DwMFaQ&c=sdnEM9SRGFuMt5z5w3AhsPNahmNicq64TgF1JwNR0cs&r=tknlanG\\_PkVwm83166UnMjiQXq4Q](https://urldefense.proofpoint.com/v2/url?u=https-3A_drive.google.com_open-3Fid-3D1ymjzG3RB7xOWLP09mXTj6l57z5kYosGG&d=DwMFaQ&c=sdnEM9SRGFuMt5z5w3AhsPNahmNicq64TgF1JwNR0cs&r=tknlanG_PkVwm83166UnMjiQXq4Q)  
([https://urldefense.proofpoint.com/v2/url?u=https-3A\\_drive.google.com\\_open-3Fid-3D1iAdkH6Ya8sH0WBm6jC-2DloGX0AHV5r-5FK7&d=DwMFaQ&c=sdnEM9SRGFuMt5z5w3AhsPNahmNicq64TgF1JwNR0cs&r=tknlanG\\_PkVwm83166UnMjiQXq4QQ1bJt44AdXi6cmE&m=MVPbWXYR5ufnk](https://urldefense.proofpoint.com/v2/url?u=https-3A_drive.google.com_open-3Fid-3D1iAdkH6Ya8sH0WBm6jC-2DloGX0AHV5r-5FK7&d=DwMFaQ&c=sdnEM9SRGFuMt5z5w3AhsPNahmNicq64TgF1JwNR0cs&r=tknlanG_PkVwm83166UnMjiQXq4QQ1bJt44AdXi6cmE&m=MVPbWXYR5ufnk))  
(Nepali)



EXHIBIT F

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

**Civil Action No. 20-cv-1480-RM-MEH**

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.

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**DECLARATION OF MARK HOTALING**

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This Declaration is submitted in support of Plaintiffs' Supplement to their Motion for Preliminary Injunction dated June 30, 2020 (the "Supplement").

1. My name is Mark Hotaling.

2. On June 2, 2020 Governor Polis held a press conference. A true and accurate depiction of the June 2 press conference is set forth here:  
<https://www.cpr.org/2020/06/02/watch-video-polis-colorado-coronavirus-update-9/>

3. At the June 2, 2020 press conference Governor Polis made the following statements:

(a) "And to those who are peacefully protesting, I want you to know that I see you, I hear you, and I grieve with you. And more importantly, I want to work with you to make Colorado better and America better." 3:46 to 4:03

(b) "I commend those who peacefully join in the protests and help clean up the morning after." 4:37 to 4:42

(c) "It is also divisive and sad to hear some call for a more violent crackdown against peaceful demonstrators exercising their First Amendment rights under our Constitution . . . This is not China. This is not Tiananmen Square, and that's not leadership." 5:07 to 5:31

(d) “I was glad to see the Denver Police Chief yesterday join arm-in-arm with those who exercised their free speech to protest the unjust murder of George Floyd.” 6:40 to 6:51

(e) “One of my greatest fears in watching the events over the last weekend is that so many people gathering in one place together will increase the spread of corona virus across our nation and here in Colorado. Only in the coming weeks will we see the full impact of these large gatherings. But health experts tell me it could result in hundreds of new cases and untold pain, death and suffering just as we were making progress. At least I was glad to see many protesters, hopefully most, wearing masks to protect themselves and those around them from corona virus.” 7:42 to 8:24

(f) “Congregating outside is certainly safer than congregating inside. But with so many people in one area and statistically it’s a certainty that some of them were asymptomatic or mildly symptomatic carriers of corona virus. There’s no doubt that those who congregated faced an increased risk of infection. . . . Exercising our First Amendment rights of speech of gathering is a constitutionally protected right, and we want to make sure that everybody doing it is as safe as possible.” 8:49 to 9:52

(g) “You know we need to remember that we are dealing with a global pandemic. And we should all be wearing masks whenever we are interacting with others outside of our household and take the proper precautions in every situation to try to be six feet from others. And while it was encouraging to see so many of the protesters do that, as governor it certainly kept me up at night worrying about thousands or tens of thousands of people congregating and the health risk to our state for this justified cause.” 11:04 to 11:40

(h) “It is not safe to be clustered together in a small outdoor areas.” 14:38 to 14:43

(i) “And by the way, I respect the fact that many Coloradans who joined the protests concluded it is not possible to stay at home. It is not possible to remain silent in the face of the killing of George Floyd, in the face of ongoing racial discrimination. And I completely respect the fact that those Coloradans consider that essential and they would consider it unconscionable to remain at home. So staying safer at home wasn’t possible. And we would not ask anybody to stay at home when it’s not possible and when your conscience does not allow you to stay at home.” 22:28 to 23:10

(j) “Of course I expressed on the call the concern that protesters might encounter corona virus and that could lead to public health setbacks. I talked about how masks were made available for some of the protesters in Colorado and how we are encouraging testing. And I hope that serves as an example to governors in other states to open up testing and to the extent they can, masks, to help keep those who are exercising their First Amendment rights as safe as possible.” 33:32 to 34:01

(k) “That’s one of the real public health issues around these large protests, is [] you can’t do meaningful contact tracing other than that if there is a group of people that went



together . . . That's why it is of a very different nature than an organized sport or an activity where we know who's doing it." 35:03 to 36:29

4. On May 29, 2020 Governor Polis issued a statement regarding the protests, a copy of which is attached as Exhibit B to the Supplement.

5. According to its website, Red Rocks Amphitheatre has a capacity of over 9,000 people.

6. On May 30, 2020, a group of 1,288 people, including numerous public health and infectious diseases professionals, issued an open letter that was widely reported in the media. An accurate copy of the open letter is attached as Exhibit A to the Supplement.

7. On June 1, 2020 Governor Polis issued a joint statement with Denver Mayor Michael Hancock. An accurate copy of the statement is attached as Exhibit C to the Supplement.

8. The leadership and members of High Plains Harvest Church engage in expressive activities during their services. They preach, read the Bible out loud, pray, sing, teach, and proclaim the Gospel of Jesus Christ.

9. On or about June 15, 2020, the Colorado Department of Public Health and Environment issued a statement in which it stated that it continues "to do everything possible to limit and slow the spread of COVID-19, but we also acknowledge that the scourge of systemic racism weighs heavily on the public's mind, and understand the need to protest or demonstrate peacefully."

#### VERIFICATION

I, Mark Hotaling, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury that I have reviewed the foregoing, that I am competent to testify in this matter, and that the facts contained therein are true and correct

Mark Hotaling

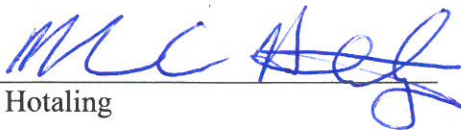


EXHIBIT G

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.

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SUPPLEMENTAL DECLARATION OF RACHEL HERLIHY, M.D.

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

1. I have submitted two previous declarations in this lawsuit. The first was in support of the State Defendants' opposition to Plaintiffs' original request for a temporary restraining order. The second was in support of the State Defendants' opposition to Plaintiffs' renewed request for a temporary restraining order.

2. Rather than restate what was said in my previous declarations, I hereby incorporate those declarations by reference herein.

3. The purpose of this declaration is to provide an update on the spread of COVID-19 and recent studies and modeling related to the transmission of the virus.

**A. COVID-19 remains widespread in Colorado and nationwide.**

4. As of July 20, 2020, there are 40,566 known cases of COVID-19 in Colorado. It is estimated that about 240,000 Coloradans are or have been infected with COVID-19.

5. As of July 20, 2020, 6,057 Coloradoans have been hospitalized and 1,615 Coloradans have died from COVID-19.

6. 63 of Colorado's 64 counties have reported cases of COVID-19 as of July 20, 2020.

7. As of July 20, 2020, there are 275 people hospitalized with COVID-19, and an additional 122 who are persons under investigation.

8. All 50 states and the District of Columbia have reported cases of COVID-19.

9. As of July 20, 2020, the World Health Organization reports about 14,348,858 cases globally, and 603,691 confirmed deaths.

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

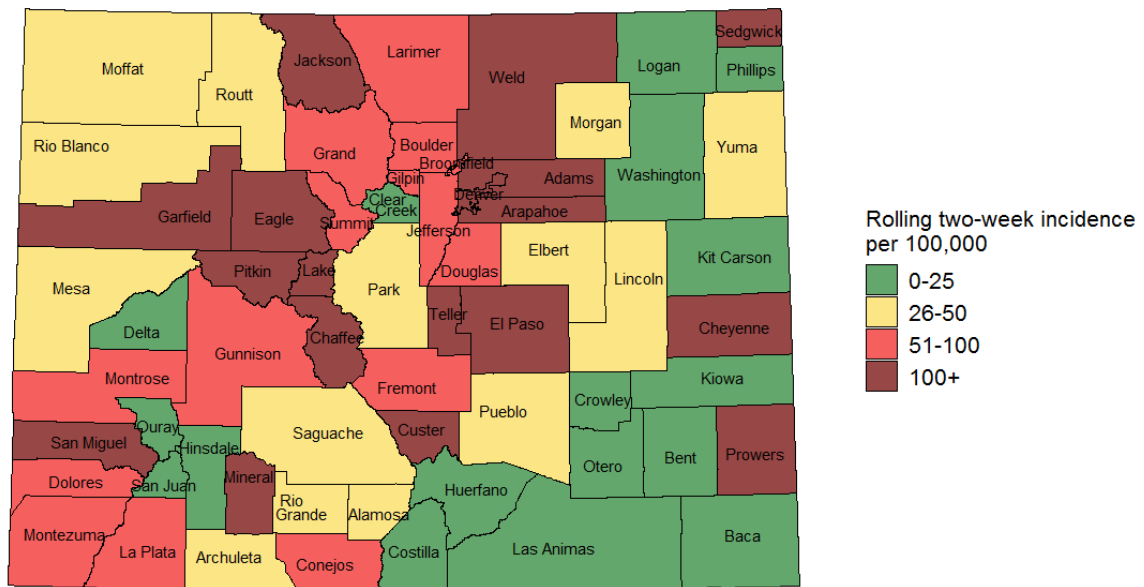
**B. COVID in Weld County**

11. The incidence of COVID-19 infection in Weld County is 1,021 cases per 100,000 population.

12. The incidence of COVID-19 infection in the State of Colorado overall is 697 cases per 100,000 population.

13. 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:

Rolling two-week cumulative incidence rates per 100,000 were calculated for each county (July 5, 2020 - July 18, 2020) :



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

15. This means that someone in Weld County would be more likely to acquire COVID-19 infection than in other counties in Colorado with a lower disease burden.

16. On July 16, 2020, due to increasing disease transmission in the state, Governor Polis put a two week pause on the variance process, during which no new variances will be approved.

17. Since my last declaration, CDPHE release two additional Public Health Orders, the Seventh and Eighth Amended PHOs. I have reviewed Exhibits 15 and 16 to the Opposition to the Preliminary Injunction. Exhibits 15 and 16 are true and accurate copies of the Seventh and Eighth PHOs.

18. Pursuant to the Eighth Amended PHO, “[f]or 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.”

19. Under this provision, the outdoor worship service limit for a house of worship in Weld County is set by the Weld County local authority.

**C. New COVID-19 cases are and will continue to increase in Colorado and nationwide.**

20. Beginning around the end of June, Colorado (along with many other states) began to see an increase in new COVID-19 cases and hospitalizations.

21. This is caused by a number of different factors, including the gradual reopening of restaurants, bars, and churches, which has led to Coloradans have more interactions with one another.

22. There is also an increase in behavioral changes, with people being less inclined to maintain social distancing as compared to the beginning of the COVID-19 outbreak in March.

23. States such as Arizona and Florida are seeing a massive surge in new COVID-19 cases since the end of June. This can be directly attributed to rolling back necessary social distancing and public health orders too quickly, and the populations of those states not consistently wearing masks and maintaining social distancing.

24. Recent modeling projects Colorado to have continual increases of new COVID-19 cases throughout the rest of the summer and into early fall.

25. CDPHE uses the Colorado COVID-19 Modeling Group to perform these modeling projects. The Modeling Group is a consortium of public health experts, other scientists, mathematicians, and academics that CDPHE uses to evaluate the current state of COVID-19 spread in Colorado.

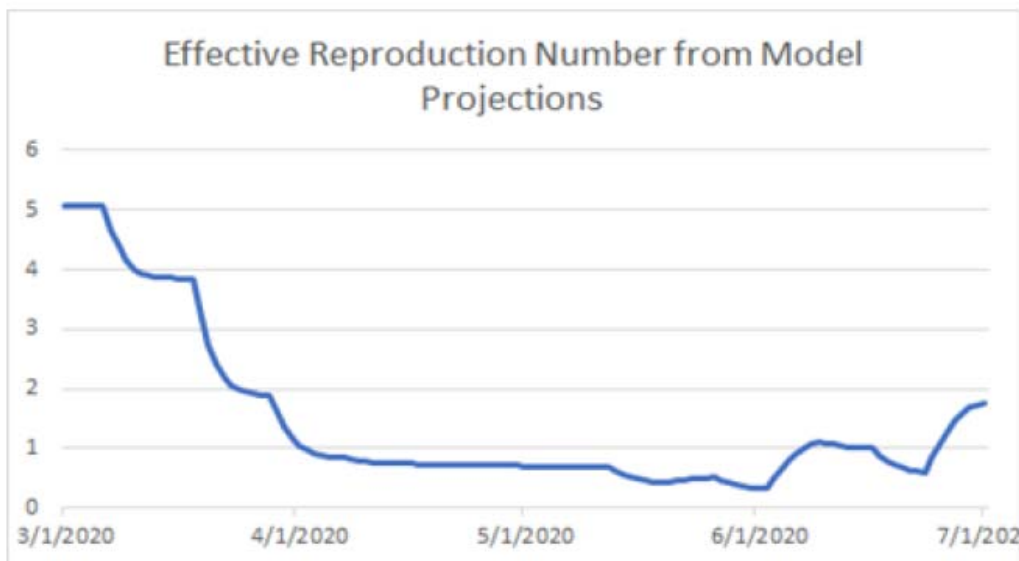
26. These researchers have determined that social distancing has been declining since May.

27. When Colorado transitioned from the Stay at Home orders in May, social interactions had been reduced by approximately 87%.

28. By early June, that number dropped to 66%, and is now estimated at 41% through late June.

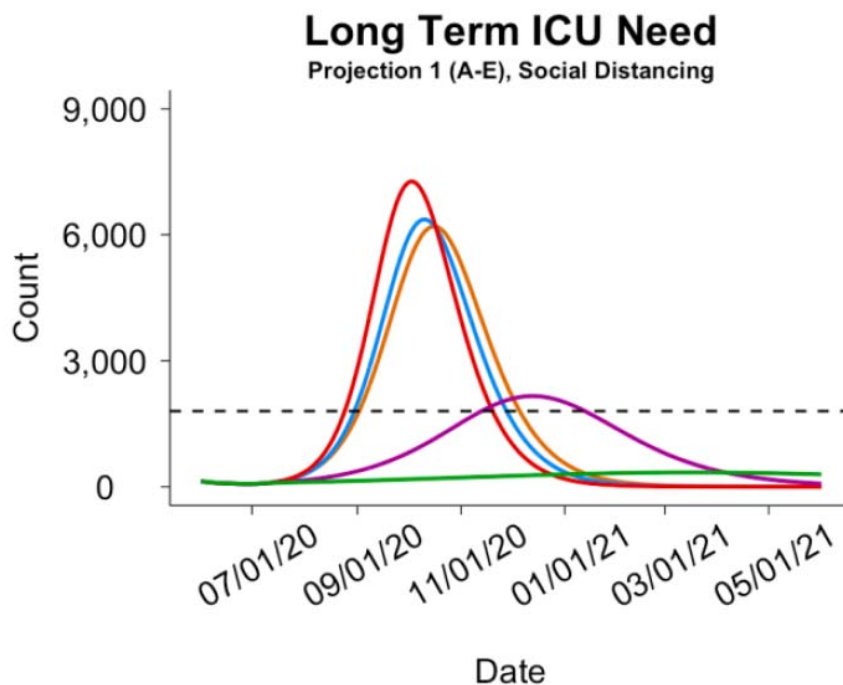
29. An increase in social interactions permits the virus to spread again more quickly. The spread of the virus is represented by the effective reproduction number. An effective reproductive number above 1 indicates growth in infections.

30. The estimated effective reproductive number is at its highest point now since it was in late March. The following chart shows estimated effective reproductive numbers.



31. Current projections, released July 16, reveal that the risk of overwhelming Colorado’s hospital ICU beds is increasing.

32. If the current 41% social distancing continues, represented by the orange line in the chart below, ICU beds will be overwhelmed in early September. If social distancing increases to 55%, shown in purple, that date will move to November. And only if Colorado achieves 65% social distancing, represented by the green line, can Colorado avoid exceeding its hospital capacity.



33. This modeling now projects another spike of COVID-19 cases around the end of summer and into the fall.

34. Both Colorado and Weld County are experiencing increases in both the number of new cases and the rate at which those new cases increase.

35. Similar increases are seen in visits related to COVID-19, including hospitalizations, emergency department visits, outpatient visits, and in the percent of COVID-19 tests that come back positive.

**D. Recent studies suggests that increased cases in Colorado and nationwide are likely not attributable to the George Floyd protests.**

36. Recent studies indicate that COVID-19 transmission in a closed environment, such as a church, may be close to 20 times greater than compared to an open-air environment.

37. For example, one study found that the odds that a primary case transmitted COVID-19 in a closed environment was 18.7 times greater compared to an open-air environment. Hiroshi Nishiura, et al., *Closed Environments Facilitate Secondary Transmission of Coronavirus Disease 2019 (COVID-19)* (Apr. 16, 2020) (preprint available from medRxiv), <https://doi.org/10.1101/2020.02.28.20029272>. Although not yet peer reviewed or published, this study shows significantly greater indoor case transmission in the studied cases. A true and accurate copy of this study is attached as Exhibits 17 to the Opposition to the Preliminary Injunction.

38. This is due to a number of factors. First, respiratory droplets, which are primarily responsible for spreading the disease, are more likely to be quickly dispersed outdoors versus indoors. Second, in outdoor environments, temperature extremes and sunlight decrease virus survival times.

39. In closed-indoor environments, respiratory droplets are more likely to linger on surfaces and/or be recirculated through the indoor space due to either poor ventilation or large numbers of people in the indoor space.

40. Based on available research, transmission in crowded indoor places is significantly more likely than in crowded outdoor places.

41. As a result of the transmission difference between indoor and outdoor spaces, it is not likely that recent increases in COVID-19 are attributable to the George Floyd protests.

42. In fact, CDPHE has not attributed a single COVID-19 outbreak to the protests through contract tracing or other means. That is not to say that there was no transmission during the protests, but CDPHE has not contact traced an outbreak to the protests.

**E. Colorado has linked COVID-19 outbreaks to houses of worship.**

43. Colorado has experienced outbreaks in Colorado houses of worship.

44. In one outbreak in a house of worship in El Paso County, there are currently 8 identified cases, including 4 staff and 4 congregants. Based on the investigation, it appears that the initial cases occurred among church staff and the infection was then transmitted to attendees during church services.



45. A large event hosted by a Teller County ministry has also resulted in an outbreak with 2 lab-confirmed COVID-19 positive staff, and another 7 confirmed or probable cases among attendees.

46. CDPHE is also investigating a probable outbreak in another El Paso County church, but no further information is available at this time.

**F. CDPHE did not encourage the George Floyd protests.**

47. CDPHE recognized that the George Floyd protests were going to take place regardless of whether it, or any other governmental body, encouraged or discouraged the protests. This is evident by the fact that protests took place in cities around the world.

48. In recognizing this fact, CDPHE released the Protest Guidance I mentioned in my previous declaration. The guidance was not an endorsement of violating applicable public health orders or social distancing guidelines.

49. Instead, the guidance was an attempt to best react to an ever-changing social landscape at that time. And at that time, it was important for CDPHE to release guidance to help people who decided to protest understand measures that would help them protect their health.

**G. Public health interventions are still necessary.**

50. It is still necessary to maintain applicable public health interventions, such as social distancing and gradual reopenings.


51. The goal of gradual reopenings is to prevent the pandemic from accelerating further. This will help prevent exceeding hospital capacity and running out of ventilators.

52. There is also a national push to get kids back to school in the fall. This is likely not possible without continuing social distancing and gradual reopening strategies.

53. Absent use of all strategies, Colorado is likely to face a second peak of COVID-19 in late summer to early fall.

\* \* \*

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



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Rachel Herlihy, M.D.



**SECOND AMENDED PUBLIC HEALTH ORDER 20-36**  
**COVID-19 DIAL**  
**November 20, 2020**

**PURPOSE OF THE ORDER**

I issue this Public Health Order (PHO or Order) pursuant to the Governor's directive in **Executive Order D 2020 235** 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. This Order implements levels of restrictions for individuals, businesses and activities to prevent the spread of COVID-19 further in Colorado.

**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; defining the terms of the Governor's **Stay at Home, Safer at Home, and Protect our Neighbors** requirements as well as **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 November 16 ,2020, there have been 167,713 known cases of COVID-19 in Colorado, 11,203 Coloradans have been hospitalized and 2,276 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 Colorado. Our work to "flatten the curve"



## Second Amended Public Health Order 20-36 COVID-19 Dial

November 20, 2020

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 235** requires the harmonizing of the various levels of activities previously described in prior **Protect Our Neighbors, Safer at Home**, and **Stay at Home** executive orders into one more simplified dial format. Counties must implement the requirements of the relevant level of the **COVID-19 Dial** for their jurisdiction, as determined by the Colorado Department of Public Health and Environment (CDPHE), based upon scientific metrics established in the **Dial**. The **Dial** still strongly encourages that people at risk of severe illness from COVID-19 remain at home or in the great outdoors as much as possible, but allows levels of business and activities based upon disease prevalence and other metrics in each county. Additionally, individuals are encouraged to remain at least 6 feet away from non-household contacts to reduce the likelihood of disease transmission, and otherwise unregulated gatherings are also limited in each level of the **Dial**. As we continue to combat COVID-19 in our communities, continuing restrictions to mitigate disease spread remain appropriate.

### INTENT

This Order sets forth the requirements for implementation of the **COVID Dial**. Individual restrictions remain in place concerning limitations on activities, travel, and public gatherings. Workplace restrictions remain necessary to implement standard **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

This Order supersedes and replaces Public Health Orders 20-32 and 20-35, as amended. The **Dial** levels in PHO 20-36 remain in effect until 11:59 pm on Thursday, November 19, 2020, and the revised **Dial** levels in this First Amended PHO 20-36 take effect at 5:00 pm Friday, November 20, 2020.

#### I. COVID Dial - Individual Requirements

- 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 **Distancing Requirements**, defined in Section IV below, and are encouraged to

**Second Amended Public Health Order 20-36 COVID-19 Dial**

November 20, 2020

leave their residences only to perform or utilize **Necessary Activities**, defined in Section IV 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** as amended and extended. Additionally, pursuant to **Executive Order D 2020 138** as amended and extended by **Executive Order D 2020 164, D 2020 190, and D 2020 219, D 2020 237, and D 2020 245** all individuals must wear face coverings in public indoor spaces, as that term is defined in the **Executive Order 2020 138**, unless the individual is 10 years of age or younger, cannot medically tolerate a face covering, or is performing one of the enumerated activities in Section II.M of **Executive Order D 2020 138** as amended and extended.
- C.** **Individuals 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, and this becomes more critical as a county's level in the **Dial** becomes more restrictive. **Individuals 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**, identified in **Appendix A** of this Order.
- D.** Individuals who are sick or are experiencing flu-like symptoms should get tested for COVID-19. 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 are released by public health. In most cases, individuals are released from isolation when they are fever-free, without medication, for twenty-four (24) hours, other symptoms have improved, and at least ten (10) days have passed since symptoms first appeared. A limited number of people with severe illness may require longer isolation. 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.
- E.** 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 **Distancing Requirements** at all times.

- F.** Individuals are encouraged to limit travel to **Necessary Travel**, defined in Section IV 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 III of this Order. People riding on public transit must comply with **Distancing Requirements** to the greatest extent feasible.

## **II. COVID-19 DIAL LEVELS.**

### **A. APPLICATION OF THE DIAL.**

1. The **COVID-19 Dial** consists of six levels that counties qualify for based on meeting specific metrics. Counties will remain in a **Dial** level so long as they continue to meet the metrics in that level. If the county falls out of compliance with one or more of the metrics associated with that level, they will have two weeks to develop and implement mitigation strategies to get back into compliance with the metric. If after two weeks one or more of the metrics remains out of compliance, the county must participate in a consultation with the Colorado Department of Public Health and Environment (CDPHE) to determine whether additional mitigation time and/or mitigation strategies are warranted, or if the county must move to a lower level. CDPHE reserves the right to move counties one or more levels more quickly as circumstances warrant.
2. Counties that meet all metrics for the next less restrictive level for a two week period may submit a request to CDPHE through their local public health agency to move to that level, which must include supporting documentation from local officials, including the local public health agency, local elected officials, and local hospitals. Counties wishing to move levels from **Blue (Safer at Home)** to **Green (Protect our Neighbor)** must complete an online certification form and process provided by CDPHE. Counties may individually, or in a grouping of counties together creating a region, certify that they meet the metrics for **Level Green**.
3. **Level Green: Protect Our Neighbors Certification**

**Second Amended Public Health Order 20-36 COVID-19 Dial**

November 20, 2020

- a. Containment and mitigation plan. Counties or regions certifying for **Level Green** must submit with the certification form a mitigation and containment plan that addresses all of the following:
  - i. what the county or region will do if it falls out of compliance with any of the metrics, and
  - ii. how the county or region will
    1. promote public compliance with the guidelines,
    2. quickly address outbreaks with tactics like issuing isolation, quarantine and closure orders, and issuing mask requirement orders
    3. increase mask-wearing in public settings, and
    4. increase flu vaccine uptake to help ensure that the health care system capacity needed for COVID-19 is not overrun.
- b. Support for containment and mitigation plan. Counties or regions certifying for **Level Green** must also submit with the certification form written support from the following local individuals or agencies that indicates their agreement with the plan and their commitment to use their resources and take the necessary and appropriate steps to educate the community regarding the requirements and enforce compliance:
  - i. local elected leaders including county commissioners and mayors,
  - ii. the hospitals that serve the county,
  - iii. law enforcement,
  - iv. emergency management,
  - v. the local public health agency, and
  - vi. if applicable, tribes.
- c. CDPHE shall review county or region certification forms and the additional required information and, as appropriate, certify a county or region to move levels from **Blue** to **Green**. Counties or regions certified for **Level Green** must maintain compliance with all of the metrics listed in Section II.B.1 above. If a county or region falls out of compliance with one or more of the metrics, it must notify CDPHE and implement the appropriate mitigation strategies in its containment and mitigation plan to address the noncompliance. Counties and regions shall have a three week period of time to come back into compliance with the metrics, and if compliance is not obtained, the county or region shall then work with CDPHE on any additional steps necessary to come back into compliance. CDPHE will ultimately determine whether the county may remain in **Level Green** or must move to a different level. CDPHE reserves the right to move counties sooner in the **Dial** as CDPHE determines is necessary.

**B. LEVEL GREEN: PROTECT OUR NEIGHBORS.**

1. Counties or regions certifying for **Level Green** must meet all of the following requirements:
  - a. Hospital bed capacity: Hospitals in, or that serve, the county or region, as defined by the local public health agency (LPHA), have sufficient bed capacity to manage a 20 percent surge in hospital admissions or patient transfers (hospital attestation of patient transfer agreements required. Please include attestations in the **Level Green** certification form).
  - b. Sufficient personal protective equipment (PPE) supply: Local hospitals must have two weeks of PPE available based on current PPE use standards.
  - c. Stable or declining COVID-19 hospitalizations:
    - i. Stable, meaning no greater than 25% increase, or declining counts of new confirmed COVID-19 hospitalizations in the county or region's referral hospitals, as defined by the LPHA, in the last 14 days compared to previous 14 day period, or
    - ii. no more than two new hospital admissions of county or region residents with confirmed COVID-19 on a single day in the last 14 days.
  - d. Fewer new COVID-19 cases:
    - i. 25 or fewer new cases/100,000 people in the past two weeks (two-week cumulative incidence), **excluding** cases among residents of congregate facilities (senior care, other residential care, youth corrections, corrections) experiencing outbreaks, or
    - ii. for a county or region with a population of less than 30,000, no more than 7 cases, excluding cases among residents of congregate facilities, such as senior care, other residential care, youth corrections, or corrections, experiencing outbreaks, in a two-week period, or
    - iii. two-week average molecular test positivity rate of less than 5% **and** county is meeting a minimum testing rate of 0.75 per 1,000 population **and** their two-week cumulative incidence is no greater than 50 cases per 100,000 people in the past two weeks.
  - e. Sufficient testing capacity: county or region has the capacity to test (collect samples and testing partnerships) 15 people per 10,000 residents per day.

**Second Amended Public Health Order 20-36 COVID-19 Dial**

November 20, 2020

- f. Ability to implement case investigation and contact tracing protocol: the local public health agency is able to implement Colorado's case investigation and contact tracing protocol for at least 85 percent of assigned cases within 24 hours.
  - g. Documented surge capacity plan for case investigation and contact tracing: the local public health agency has a documented surge-capacity plan that it can investigate and contact trace its share, based on population, of our state's overall 500 cases per day goal, meaning it is able to investigate and contact trace up to 8.7 cases per 100,000 population per day.
2. Counties and regions certified for **Level Green** may allow any business or activity within their jurisdiction to operate at 50% of their pre-pandemic capacity not to exceed 500 people, whichever is less, in any one setting. **Individuals at risk of Severe Illness from COVID-19** are advised to remain at home as much as possible. Certified counties and regions may impose restrictions within their jurisdictions that are lower than these maximum capacity limits, but may not exceed these limits.
- a. **Critical Businesses** and **Critical Government Functions** may continue to operate without capacity limitations, except that **Critical Retail** must adhere to 50% of the posted occupancy limit, but must follow the requirements in Section III.B and C of this Order.
  - b. **Non-Critical Office-Based Businesses** may operate at 50% of their pre-pandemic capacity with no further person cap or limitation.
  - c. Any business or activity that was not authorized to operate in more restrictive levels is authorized to open in a county or region certified for Protect Our Neighbors, at the capacity limits described in this Section II.E, unless limited or prohibited by the certified county or region.
  - d. CDPHE reserves the right to require additional containment and mitigation strategies beyond those detailed by a county or region in their containment and mitigation plan. CDPHE further reserves the right to rescind the certification of a region or county for Protect Our Neighbors.
  - e. Counties approved for **Level Green** that wish to exercise the exemption from **Executive Order D 2020 138**, as amended and extended, requiring the wearing of face coverings in public indoor spaces must first consult with CDPHE.
  - f. Counties may increase their businesses and activities operational capacity by 5% each month that the county continues to meet the metrics in Section II.B.1 of this Order.

**C. LEVEL BLUE: CAUTIOUS.**

1. The metrics for **Level Blue** are as follows:
  - a. New COVID-19 cases are at an incidence of no greater than 75 per 100,000 in a two week period;
  - b. The percent of positive test results over a rolling 14 day average is no greater than 5%; and
  - c. Hospitalization rates are stable or declining in the preceding 14 day period.
2. Operating capacities, maintaining **Distancing Requirements** for non-household members, for designated sectors and activities in **Level Blue** are as follows:
  - a. **Public and private gatherings** are limited to no more than 25 individuals when not otherwise regulated as a specific sector or activity in Section III of this Order; except that effective October 23, 2020 gatherings in this level are reduced to no more than 10 individuals from no more than 2 households. Nothing in this Order prohibits the gathering of members living in the same residence. **Individuals at risk of Severe Illness from COVID-19** are advised to remain at home as much as possible.
  - b. **Non-Critical Office-based Businesses** may allow in-person work up to 50% of their posted occupancy limit.
  - c. **Critical and Non-critical Retail** may operate at 50% of the posted occupancy limit.
  - d. **Non-critical Manufacturing** may operate at 50% of the posted occupancy limit up to 175 employees, whichever is less, per room.
  - e. **Field Services** may operate, and real estate open houses must follow the **Indoor Event** requirements, including capacity limits.
  - f. **Personal Services** may operate at 50% of the posted occupancy limit, not to exceed 50 people, whichever is less, per room.
  - g. **Limited Healthcare Settings** may operate at 50% of the posted occupancy limit, not to exceed 50 people, whichever is less, per room.
  - h. **Restaurants** may operate at 50% of the posted occupancy limit indoors not to exceed 175 people excluding staff, whichever is less, per room. **Restaurants** may also use any existing, licensed outdoor space for in-person dining with the same group limit of 10 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. Pursuant to **Executive Order D 2020 091**, as amended and extended, all on-premises licensees licensed under Articles 3, 4, and 5 of Title 44 of the Colorado Revised Statutes must cease alcohol beverage sales to end consumers for on-premises

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consumption and for takeout between 12:00 A.M. and 7:00 A.M. MDT each day; however, counties and municipalities may set more restrictive hours as they determine appropriate.

- i. **Smoking Lounges** may operate at 50% of the posted occupancy limit, not to exceed 25 people, whichever is less.
- j. **Houses of worship and Life Rites** may operate at 50% of the posted occupancy limit indoors not to exceed 175 people, whichever is less, per room excluding staff. 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.
- k. **Indoor Events** may be conducted at 50% of the posted occupancy limit not to exceed 175 people, whichever is less, per room excluding staff.
- l. **Outdoor Events** may operate at 50% of the posted occupancy limit not to exceed 250 people per designated activity or area.
- m. **Recreation, including Gyms, recreation centers and indoor pools** and outdoor recreation facilities, may open at 25% capacity, not to exceed 75 people, whichever is less, excluding staff per room indoors or per activity or area outdoors.
- n. **Organized recreational youth or adult league sports** may resume activities with no more than 50 players, excluding coaching staff and referees or umpires.
- o. **Outdoor Guided Activities** may be conducted at 50% capacity not to exceed 25 people, whichever is less.
- p. **Children's Day Camps, Residential Camps, Youth Sports Day Camps and Exempt Single Skill-Building Youth Camps** may be conducted with no more than 25 participants indoors and 50 participants outdoors.
- q. **Casinos** may operate their slot machines using the same capacity requirements as Indoor Events, 50% of the posted occupancy limit not to exceed 175 people per room, whichever is less, excluding staff. Table games are not authorized to operate.
- r. **Critical Businesses and Critical Government Functions** may continue to operate without capacity limitations, except that **Critical Retail** must adhere to 50% of the posted occupancy limit, but must follow the requirements in Section III.B and C of this Order.

**D. LEVEL YELLOW: CONCERN.**

1. The metrics for **Level Yellow** are as follows:



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- a. New COVID-19 cases are at an incidence of no greater than 175 per 100,000 in a two week period;
  - b. The percent of positive test results over a rolling 14 day average is no greater than 10%; and
  - c. Hospitalization rates are stable or improving in the preceding 14 day period.
2. Operating capacities, maintaining **Distancing Requirements** for non-household members, for designated sectors and activities in **Level Yellow** are as follows:
- a. **Public and private gatherings** are limited to no more than 10 individuals from no more than 2 households when not otherwise regulated as a specific sector or activity in Section III of this Order. Nothing in this Order prohibits the gathering of members living in the same residence. **Individuals at risk of Severe Illness from COVID-19** are advised to remain at home as much as possible.
  - b. **Non-Critical Office-based businesses** may operate the same as **Level Blue**, and remote working is strongly encouraged.
  - c. **Critical and Non-critical Retail** may operate the same as **Level Blue**.
  - d. **Non-critical Manufacturing** may operate at 50% of the posted occupancy limit not to exceed 50 people, whichever is less, per room. Establishments larger than 7,200 square feet may use the [Distancing Space Calculator](#) to expand to no more than 100 patrons indoors per room within their usable space.
  - e. **Field Services** may operate the same as **Level Blue**.
  - f. **Personal Services** may operate the same as **Level Blue**.
  - g. **Limited Healthcare Settings** may operate the same as **Level Blue**.
  - h. **Restaurants** may operate at 50% of the posted occupancy limit indoors not to exceed 50 people, excluding staff, whichever is less, per room. Establishments larger than 7,200 square feet may use the [Distancing Space Calculator](#) to expand to no more than 100 patrons indoors per room, excluding staff, within their usable space. Outdoor dining operates the same as **Level Blue**. Pursuant to **Executive Order D 2020 091**, all on-premises licensees licensed under Articles 3, 4, and 5 of Title 44 of the Colorado Revised Statutes must cease alcohol beverage sales to end consumers for on-premises consumption and for takeout between 11:00 P.M. and 7:00 A.M. MDT each day; however, counties and municipalities may set more restrictive hours as they determine appropriate.
  - i. **Smoking Lounges** may operate at 50% of the posted occupancy limit, not to exceed 10 people, whichever is less.

- j. **Houses of worship and Life Rites** may operate at 50% of the posted occupancy limit indoors not to exceed 50 people excluding staff, whichever is less, per room. Establishments larger than 7,200 square feet may use the [Distancing Space Calculator](#) to expand to no more than 100 patrons indoors per room, excluding staff, within their usable space. If the event is a seated event, as described in **Appendix I**, the usable space may be calculated using 6 feet distancing between non-household contacts instead of using the calculator. Outdoor worship services operate the same as **Level Blue**.
- k. **Indoor Events** may operate at 50% of the posted occupancy limit not to exceed 50 people, whichever is less, per room excluding staff within their usable space. Establishments larger than 7,200 square feet may use the [Distancing Space Calculator](#) to expand to no more than 100 patrons indoors per room, excluding staff, within their usable space. If the event is a seated event as described in **Appendix I**, the usable space may be calculated using 6 feet distancing between non-household contacts instead of using the calculator.
- l. **Outdoor Events** may operate at 50% of the posted occupancy limit not to exceed 175 people, whichever is less, within their usable space calculated using the [Distancing Space Calculator](#), excluding staff, per designated activity or area. If the event is a seated event as described in **Appendix I**, the usable space may be calculated using 6 feet distancing between non-household contacts instead of using the calculator..
- m. **Recreation**, including **Gyms, recreation centers and indoor pools** and outdoor recreation facilities and activities, may operate at 25% capacity, not to exceed 50 patrons, whichever is less, per room indoors or per activity or area outdoors.
- n. **Organized recreational youth or adult league sports** may resume activities with no more than 25 players, excluding coaching staff and referees or umpires.
- o. **Outdoor Guided Activities** may be conducted at 50% capacity not to exceed 10 people, whichever is less.
- p. **Children’s Day Camps, Residential Camps, Youth Sports Day Camps and Exempt Single Skill-Building Youth Camps** may be conducted with no more than 10 participants indoors and 25 participants outdoors.
- q. **Casinos** may operate their slot machines using the same capacity requirements as **Indoor Events**, 50% of the posted occupancy limit not to exceed 50 people, whichever is less, per room excluding staff within their usable space. Establishments larger than 7,200 square feet may use the

[Distancing Space Calculator](#) to expand to no more than 100 patrons indoors per room, excluding staff, within their usable space. If the event is a seated event as described in **Appendix I**, the usable space may be calculated using 6 feet distancing between non-household contacts instead of using the calculator. Table games are not authorized.

- r. **Critical Businesses** and **Critical Government Functions** may continue to operate without capacity limitations, except that **Critical Retail** must adhere to 50% of the posted occupancy limit, but must follow the requirements in Section III.B and C of this Order.

**E. Level Orange: High Risk.**

- 1. The metrics for **Level Orange** are as follows:
  - a. New COVID-19 cases are at an incidence of no greater than 350 per 100,000 in a two week period;
  - b. The percent of positive results over a rolling 14 day average is no greater than 15%; and
  - c. Hospitalization rates are increasing in the preceding 14 day period.
- 2. Operating capacities, maintaining **Distancing Requirements** for nonhousehold members, for designated sectors and activities in **Level Orange** are as follows:
  - a. **Public and private gatherings** are limited to no more than 10 individuals from no more than 2 households when not otherwise regulated as a specific sector or activity in Section III of this Order. Nothing in this Order prohibits the gathering of members living in the same residence. **Individuals at risk of Severe Illness from COVID-19** are strongly advised to remain at home as much as possible.
  - b. **Non-Critical Office-based businesses** may allow in-person work up to 25% of their posted occupancy limit, and are strongly encouraged to implement remote work to the greatest extent possible
  - c. **Critical and Non-critical Retail** may operate at 50% of the posted occupancy limit, and should offer increased options for curbside pickup, delivery, and dedicated service hours for senior and at-risk individuals.
  - d. **Non-critical Manufacturing** may operate at 25% of the posted occupancy limit not to exceed 50 people, whichever is less, per room.
  - e. **Field Services** may operate, and real estate open houses must follow the **Indoor Event** requirements.
  - f. **Personal Services** may operate at 25% of the posted occupancy limit, not to exceed 25 people, whichever is less, per room.
  - g. **Limited Healthcare Settings** may operate at 25% of the posted occupancy limit, not to exceed 25 people, whichever is less, per room.

- h. **Restaurants** may operate at 25% of the posted occupancy limit indoors not to exceed 50 people, excluding staff, whichever is less, per room. Restaurants may also use any existing, licensed outdoor space for in-person dining with a group limit of 10 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. Pursuant to **Executive Order D 2020 091** all on-premises licensees licensed under Articles 3, 4, and 5 of Title 44 of the Colorado Revised Statutes must cease alcohol beverage sales to end consumers for on-premises consumption and for takeout between 10:00 P.M. and 7:00 A.M. MDT each day; however, counties and municipalities may set more restrictive hours as they determine appropriate.
- i. **Smoking Lounges** may operate at 25% of the posted occupancy limit, not to exceed 10 people, whichever is less.
- j. **Houses of worship and Life Rites** may operate at 25% of the posted occupancy limit indoors not to exceed 50 people excluding staff, whichever is less, per room, calculated using the [Distancing Space Calculator](#). For seated events as described in **Appendix I**, the usable space may be calculated using 6 feet distancing between non-household contacts instead of using the calculator. Outdoor worship services shall operate at the same level as **Blue**.
- k. **Indoor Events** may operate at 25% of the posted occupancy limit not to exceed 50 people excluding staff, whichever is less, within their usable space calculated using the [Distancing Space Calculator](#) per room. If the event is a seated event as described in **Appendix I**, the usable space may be calculated using 6 feet distancing between non-household contacts instead of using the calculator.
- l. **Outdoor Events** may operate at 25% of the posted occupancy limit not to exceed 75 people excluding staff, whichever is less, within their usable space calculated using the [Distancing Space Calculator](#) per designated activity or area. If the event is a seated event as described in **Appendix I**, the usable space may be calculated using 6 feet distancing between non-household contacts instead of using the calculator.
- m. **Recreation**
  - 1. **Gyms, recreation centers and indoor pools** may operate at 25% capacity, not to exceed 25 people, whichever is less, excluding staff per room indoors or per activity or area outdoors. Organized

recreational youth or adult league sports must instead follow the requirements in Section II.E.2.n below.

2. **Outdoor recreational** activities in groups of 10 people or fewer may occur, maintaining 6 feet **Distancing Requirements** between non-household contacts.
- n. **Organized recreational youth or adult league sports** are not authorized for indoor settings. Virtual services may be provided, or outdoor recreational sports in groups of 10 people or fewer may occur, maintaining 6 feet **Distancing Requirements** between non-household contacts.
- o. **Outdoor Guided Activities** may be conducted at 25% capacity not to exceed 10 people, whichever is less.
- p. **Children’s Day Camps, Residential Camps, Youth Sports Day Camps and Exempt Single Skill-Building Youth Camps** may be conducted virtually or with no more than 10 participants outdoors only.
- q. **Casinos** may operate at the same capacity requirements as **Indoor Events**, 25% of the posted occupancy limit not to exceed 50 people excluding staff, whichever is less, within their usable space calculated using the [Distancing Space Calculator](#) per room. If the event is a seated event as described in **Appendix I**, the usable space may be calculated using 6 feet distancing between non-household contacts instead of using the calculator. Table games are not authorized.
- r. **Critical Businesses** and **Critical Government Functions** may continue to operate without capacity limitations, except that **Critical Retail** must adhere to 50% of the posted occupancy limit, but must follow the requirements in Section III.B and C of this Order.

**F. LEVEL RED: SEVERE RISK.**

1. The metrics for **Level Red** are as follows:
  - a. New COVID-19 cases are at an incidence of greater than 350 per 100,000 in a two week period;
  - b. The percent of positive results over a rolling 14 day average is greater than 15%; and
  - c. Hospitalization rates are increasing in the preceding 14 day period.
2. Operating capacities, maintaining **Distancing Requirements** for nonhousehold members, for designated sectors and activities in **Level Red** are as follows:
  - a. **Public and private gatherings** involving two or more people are prohibited, except for the limited purposes expressly authorized in this Order and for the purpose of accessing or engaging in **Necessary**

**Activities.** Nothing in this PHO prohibits the gathering of members living in the same residence.

- b. **Non-critical Office-based businesses** may allow in-person work up to 10% of their posted occupancy limit, and are strongly encouraged to implement remote work to the greatest extent possible.
- c. **Critical and Non-critical Retail** may operate at 50% of the posted occupancy limit, and should offer enhanced options for curbside pickup, delivery, and dedicated service hours for senior and at-risk individuals.
- d. **Non-critical Manufacturing** may operate at 25% of the posted occupancy limit not to exceed 50 people, whichever is less, per room.
- e. **Field Services** that are not necessary to maintain the safety, sanitation, and critical operation of residences and other **Critical Businesses** or **Critical Government Functions** are closed. Individual real estate showings are authorized and open houses may operate with only one household in the property at a time.
- f. **Personal Services** may operate at 25% of the posted occupancy limit, not to exceed 25 people, whichever is less, per room.
- g. **Limited Healthcare Settings** may operate at 25% of the posted occupancy limit, not to exceed 25 people, per room to provide those services.
- h. **Restaurants** are closed for in-person indoor dining but may offer curbside, takeout and delivery services. Restaurants may also use any existing, licensed outdoor space for in-person outdoor dining with tables limited to members of the same household 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. Pursuant to **Executive Order D 2020 091**, all on-premises licensees licensed under Articles 3, 4, and 5 of Title 44 of the Colorado Revised Statutes must cease alcohol beverage sales to end consumers for on-premises consumption between 8:00 P.M. and 7:00 A.M. MDT each day. Takeout may continue until 10:00 PM. Counties and municipalities may set more restrictive hours as they determine appropriate.
- i. **Smoking Lounges** are closed for indoor services, but can remain open outdoors with tables limited to members of the same household.
- j. **Houses of worship and Life Rites** may operate at 25% of the posted occupancy limit indoors not to exceed 50 people excluding staff, whichever is less, per room, calculated using the [Distancing Space Calculator](#). For seated events as described in **Appendix I**, the usable

space may be calculated using 6 feet distancing between non-household contacts instead of using the calculator. Outdoor worship services shall operate at the same level as **Blue**.

- k. **Indoor Events** are closed.
- l. **Outdoor Events** may operate at 25% of the posted occupancy limit not to exceed 75 people excluding staff, whichever is less, within their usable space calculated using the [Distancing Space Calculator](#) per designated activity or area. If the event is a seated event as described in **Appendix I**, the usable space may be calculated using 6 feet distancing between non-household contacts instead of using the calculator. Two or more individuals attending an outdoor event together must be members of the same household and shall maintain 6 feet distancing from attendees who are not household members.
- m. **Recreation**
  - 1. **Gyms, recreation centers and indoor pools** may operate at 10% capacity, not to exceed 10 people, whichever is less, excluding staff per room indoors. **Gyms and recreation centers** may operate with 10 or fewer individuals outdoors. Reservations are required for all indoor and outdoor services. Organized recreational youth or adult league sports must instead follow the requirements in Section II.F.2.n below.
  - 2. **Outdoor recreational** activities in groups of 10 people or fewer may occur, maintaining 6 feet **Distancing Requirements** between non-household contacts.
- n. **Organized recreational youth or adult league sports** are not authorized for indoor settings. Virtual services may be provided, or outdoor recreational sports in groups of 10 people or fewer may occur, maintaining 6 feet **Distancing Requirements** between non-household contacts.
- o. **Outdoor Guided Activities** may be conducted at 25% capacity not to exceed 10 people, whichever is less.
- p. **Children's Day Camps, Residential Camps, Youth Sports Day Camps and Exempt Single Skill-Building Youth Camps** may be conducted with no more than 10 participants outdoors only.
- q. **Casinos** are closed for in-person work and services under this Order but may continue to carry out **Minimum Basic Operations**.
- r. **Critical Businesses and Critical Government Functions** may continue to operate without capacity limitations, except that **Critical Retail** must adhere to 50% of the posted occupancy limit, but must follow the requirements in Section III.B and C of this Order.



**G. Level Purple: Extreme Risk**

1. The metrics for **Level Purple** are as follows:
  - a. Hospital capacity risks being breached, which may be indicated by:
    - i. approaching the need for hospital crisis standards of care,
    - ii. utilizing alternate care sites,
    - iii. critical shortages of staff or personal protective equipment (PPE),  
or
    - iv. hospitals approaching 90% of their reported surge capacity.
  - b. Extreme risk to individuals in the county, region or state as determined by CDPHE.
2. Operating capacities, maintaining **Distancing Requirements** for nonhousehold members, for designated sectors and activities in **Level Purple** are as follows:
  - a. **Public and private gatherings** involving two or more people of any number of people occurring outside a residence are prohibited, except for the limited purposes expressly authorized in this Order permitted in this PHO and for the purpose of accessing or engaging in which include **Essential Necessary Activities**. Nothing in this PHO prohibits the gathering of members living in the same residence.
    - i. All travel, including, but not limited to, travel by automobile or public transit, except **Necessary Travel** is prohibited. People must use public transit only for purposes of performing **Necessary Activities** or to travel to and from work to operate **Critical Businesses** or maintain **Critical Governmental Functions**. People riding on public transit must comply with **Distancing Requirements** to the greatest extent feasible.
  - b. **Non-critical Office-based businesses** are closed for in-person work but may continue to perform remote work if possible and carry out **Minimum Basic Operations**.
  - c. **Non-critical Retail** is closed for in-person work or services but may operate and provide curbside, pick up or delivery services, may provide services online, and may continue to carry out **Minimum Basic Operations**. **Critical Retail** is strongly encouraged to take extraordinary measures to provide enhanced curbside, pick up or delivery services and minimize in-person services to the greatest extent possible.
  - d. **Non-critical Manufacturing** may operate at 10% of the posted occupancy limit not to exceed 25 people, whichever is less, per room.
  - e. **Field Services** that are not necessary to maintain the safety, sanitation, and critical operation of residences and other **Critical Businesses** or



- Critical Government Functions** are closed, including real estate open houses.
- f. **Personal Services** are closed for in-person work and services but may continue to carry out **Minimum Basic Operations**.
  - g. **Limited Healthcare Settings** that provide services that are ordered by a medical, dental or veterinary practitioner in accordance with Public Health Order 20-29 may operate at 10% of the posted occupancy limit, not to exceed 25 people, per room to provide those services. All other services offered by **Limited Healthcare Settings** are closed for in-person work but may continue to carry out **Minimum Basic Operations**.
  - h. **Restaurants** are closed for in-person indoor and outdoor dining but may offer curbside, takeout and delivery services.
  - i. **Smoking Lounges** are closed for in-person work but may continue to carry out **Minimum Basic Operations**.
  - j. **Houses of worship and Life Rites** are encouraged to provide services through remote, online platforms or in outdoor settings, or may provide in-person services for groups of 10 or fewer per room, excluding staff.
  - k. **Indoor Events** are closed.
  - l. **Outdoor Events** are closed.
  - m. **Recreation**
    - 1. **Gyms, recreation centers and indoor pools** are closed for indoor activities, except that 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 may operate. **Gyms** and **recreation centers** may operate with 10 or fewer individuals outdoors.
    - 2. **Outdoor recreational** activities in groups of 10 people or fewer may occur, maintaining 6 feet **Distancing Requirements** between non-household contacts.
  - n. **Organized recreational youth or adult league sports** are not authorized for indoor settings. Virtual services may be provided, or outdoor recreational sports in groups of 10 people or fewer may occur, maintaining 6 feet **Distancing Requirements** between non-household contacts.
  - o. **Outdoor Guided Activities** may operate at 25% capacity of the outdoor activity setting, not to exceed 10 household members.

- p. **Children’s Day Camps, Residential Camps, Youth Sports Day Camps and Exempt Single Skill-Building Youth Camps** are closed.
- q. **Casinos** are closed for in-person work and services under this Order but may continue to carry out **Minimum Basic Operations**.
- r. **Critical Businesses** and **Critical Government Functions** may continue to operate without capacity limitations, except that **Critical Retail** must adhere to 50% of the posted occupancy limit, but must follow the requirements in Section III.B and C of this Order.

### III. Business and Activity Requirements

- A. In **Levels Blue, Yellow, and Orange**, any business or activity not addressed in this Order or corresponding interpretive guidance found [here](#) may operate with 10 or fewer individuals per room in accordance with the requirements in Section III.C of this Order. In **Levels Red and Purple**, any business not addressed in Sections II.F and II.G of this Order are closed.
  - 1. The following establishments remain closed in **Levels Blue, Yellow, Orange and Red**:
    - a. **Bars** that do not serve food; and
    - b. Amusement parks, and the use of bounce houses and ball pits in any public or commercial venue.
  - 2. The following businesses or activities are subject to the requirements of other public health orders:
    - a. Nursing facilities, assisted living residences and intermediate care facilities are subject to PHO 20-20; and
    - B. Voluntary and elective surgeries and procedures are subject to PHO 20-29.
- B. All **Critical Businesses** and **Critical Government Functions**, as defined in **Appendix A** and Section IV.C of this Order, may continue to operate, and must comply with **Distancing Requirements**, 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** and **Critical Government Functions** should follow all of the requirements in this Order for their sector, and any applicable [CDPHE guidance](#), unless doing so would make it impossible to carry out critical functions.

**C. All Business and Government Functions. All Businesses and Government Functions** shall follow the protocols below:

1. **Face Coverings.** Face coverings are required pursuant to **Executive Order D 2020 138**, as amended and extended, for all individuals in public indoor settings unless the individual is 10 years of age or younger, cannot medically tolerate a face covering, or is participating in one of the activities described in Section II.M of **Executive Order D 2020 138**, as amended and extended.
  
2. **Work Accommodations.** Employers must provide reasonable work accommodations, such as telecommuting, for **Individuals At Risk of Severe Illness from COVID-19** who are still advised to stay in their residence. Employers are also strongly encouraged to provide reasonable work accommodations for individuals who reside with or are caring for **Individuals at Risk of Severe Illness from COVID-19**, or facing child care needs while schools remain closed.
  
3. **Disease Prevention Measures for the Workplace.** 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 **Distancing Requirements** 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 mandate 6 feet **Distancing Requirements** of staff from one another;

3. exclude employee until they are released from isolation by public health. In most cases, someone is released from isolation when they are fever-free, without medication, for 24 hours, other symptoms have improved and 10 days have passed since their first symptom. A limited number of people with severe illness may require longer isolation; 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.
4. **Disease Prevention Measures for Employees.** 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 **Individuals at Risk of Severe Illness from COVID-19** who remain subject to **Stay at Home** advisement, prioritizing telecommuting, as **Individuals at Risk of 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](#) and require face coverings for all employees in public indoor spaces pursuant to **Executive Order D 2020 138**, as amended and extended.
5. **Disease Prevention Measures for Customers.** Employers and sole proprietors

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shall implement the following measures regarding customers to minimize disease transmission:

- a. create whenever possible special hours for **Individuals at Risk of Severe Illness from COVID-19** only;
- b. encourage 6 foot **Distancing Requirements** inside of the business for all patrons;
- c. encourage customer use of protection like gloves and face coverings, and require face coverings for all customers in public indoor spaces pursuant to **Executive Order D 2020 138**, as amended and extended;
- 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.

6. **Large Employers.** 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.C.3.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 **Distancing Requirements**.

**D. Non-Critical Office-Based Businesses** may operate at the level described in Section II of this Order for which the county in which they operate is approved, and must comply with the requirements of **Appendix B** of this Order.

**E. All Non-Critical Retail** may operate at the level described in Section II of this Order for which the county in which they operate is approved, and must comply with the requirements of **Appendix C** of this Order.

**F. Non-Critical Manufacturing** may operate at the level described in Section II of this Order for which the county in which they operate is approved, and must comply with the requirements of **Appendix D** of this Order.

- G. Field Services** may operate at the level described in Section II of this Order for which the county in which they operate is approved, and must comply with the requirements of **Appendix E** of this Order.
- H. Personal Services** may operate at the level described in Section II of this Order for which the county in which they operate is approved, and must comply with the requirements of **Appendix F** of this Order.
- I. Limited Healthcare Settings** may operate at the level described in Section II of this Order for which the county in which they operate is approved, and must comply with the requirements of **Appendix G** of this Order.
- J. Restaurants** may operate at the level described in Section II of this Order for which the county in which they operate is approved, and must comply with the requirements of **Appendix H**. Additionally, for **Levels Blue, Yellow, Orange and Red**, only **Bars** that offer food from a licensed retail food establishment for on-premise consumption and follow the Restaurant requirements in **Appendix H** of this Order may operate. All other **Bars** are closed to ingress, egress, use, and occupancy by members of the public, but may offer alcoholic beverages with food service offered through 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 **Distancing Requirements**.
1. All licensees licensed pursuant to Articles 3, 4 and 5 of Title 44 of the Colorado Revised Statutes, including approved sales rooms licensed under C.R.S. §§ 44-3-402(2), 44-3-402(7), 44-3- 403(2)(e), or 44-3-407(1)(b), that are licensed for on-premises consumption of alcohol beverages must make meals prepared by a retail food licensee available at all times that alcohol beverages are served for on-premises consumption. Nothing in **Executive Order D 2020 091**, as amended and extended:
    - a. prohibits on-premises licensees licensed under Articles 3 or 4 of Title 44 of the Colorado Revised Statutes who have delivery privileges from making alcohol beverage sales for delivery after the close of on-premise or take-out services; or
    - b. changes or amends the requirements of C.R.S. § 44-3-901(1)(a) that prohibit selling or serving alcohol beverages to visibly intoxicated people, and in accordance with Colorado law, over-service violations could result in administrative action by the Liquor Enforcement Division up to and including revocation of a liquor license.

- K. Smoking Lounges** may operate at the level described in Section II of this Order for which the county in which they operate is approved. For **Smoking Lounges** with outdoor spaces, the establishment must follow local zoning requirements for such spaces. **Smoking Lounges** may provide retail sales, pick up, and delivery of their products.
- L. Houses of Worship and Life Rites** may operate at the level described in Section II of this Order for which the county in which they operate is approved, and should follow the [Colorado Department of Public 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 cleaned and disinfected between services.
1. **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 **Distancing Requirements**.
  2. For **Life Rites**, only the ceremony or rite itself is included in this authorization, receptions or parties associated with life rites are not included in this authorization.
- M. Indoor and Outdoor Events** may operate at the level described in Section II of this Order for which the county in which they operate is approved, and must comply with the requirements of **Appendix I** of this Order.
- N. Recreation**, including **Gyms and Fitness** and outdoor recreation facilities and activities may operate at the level described in Section II of this Order for which the county in which they operate is approved, and must comply with the specific requirements of **Appendix J** of this Order.
- O. Sports.**
1. **Organized Recreational Youth or Adult League Sports** may operate at the level described in Section II of this Order for which the county in which they operate is approved, and must comply with the requirements of **Appendix J**.
  2. **Professional sports** may resume pre-season practices, training and league play after they submit a reopening plan that details their disease prevention and mitigation strategies to the CDPHE and receive approval, and visiting teams will also follow those approved plans when playing in Colorado. Many professional leagues have created their own reopening requirements and guidance, and professional teams are expected at a minimum to

incorporate those requirements into their reopening plans. Colorado sporting events that include both a professional event and a recreational event must have their professional opening plan reviewed and approved by CDPHE. Any recreational sporting events must follow the recreation requirements contained in **Appendix J** and any guidance found [here](#).

3. **High School Sports** that do not follow the personal recreation guidance in **Appendix J**, and are operating under the auspices of the Colorado High School Athletic Association (CHSAA), may resume practices and games after CHSAA submits plans to CDPHE that detail their disease prevention and mitigation strategies and receives approval.
- P. Outdoor Guided Activities** may operate at the level described in Section II of this Order for which the county in which they operate is approved, and must comply with the requirements of **Appendix K** of this Order.
- Q. Children’s Day Camps, Residential Camps, Youth Sports Day Camps and Exempt Single Skill-Building Youth Camps** may operate at the level described in Section II of this Order for which the county in which they operate is approved, and must comply with the requirements of **Appendix L** of this Order. License-exempt child care programs, such as single skill-building and 72-hour camps, are considered critical child care services and must follow the child care guidance, including the [case and outbreak guidance](#) for schools and child cares. Single skill-building team or group sports camps are not considered critical child care services and must follow the requirements in Section II and **Appendix L** of this Order.
- R. Postsecondary Institutions.** Programs and courses at public and private postsecondary institutions may resume in-person classes at the same capacity restrictions for **Indoor Events** at the level described in Section II of this Order for which the county in which they operate is approved.
1. Each institution should consult with the local public health agency for the county in which the institution resides concerning implementation of disease prevention measures in accordance with the [CDPHE Guidance for Higher Education](#), including following all **Distancing Requirements**, determining whether course content should be delivered remotely or in person based upon the prevalence of disease at the school and in the county, and managing any cases and outbreaks, including helping implement quarantine and isolation as needed, to minimize any further spread of disease.



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2. Institutions that conduct COVID-19 sample collection for testing in a lab that they own, operate or manage must report all test results, whether positive or negative, to CDPHE. Institutions that contract out laboratory testing services for COVID-19 samples must include in their contracts with the laboratory service provider the requirement to submit all COVID-19 testing results to CDPHE.
3. Institutions shall work in close collaboration and coordination with local health officials and health care partners to develop protocols for confirmed cases and outbreaks of COVID-19 at the institution and in the community. Such protocols shall include communication with public health, case notification, environmental cleaning, contact tracing, and arranging for quarantine of contacts and isolation of cases.
4. All possible outbreaks of COVID-19 must be reported to public health within 24 hours of detection in a manner specified by CDPHE. If an institution is unsure if the cases had contact with one another, report to public health for investigation.
  - a. An outbreak in a postsecondary institution is defined as two or more laboratory-confirmed COVID-19 cases among students or staff, from separate households, in contact with one another with either onset of symptoms of disease or a positive test date if asymptomatic, within a 14-day period.
5. Institutions shall respond to CDPHE surveys collecting information concerning COVID-19 investigation and response activities, such as the use of quarantine and isolation, in a manner specified by CDPHE.
6. Residential postsecondary institutions shall have policies in place that require all of the following:
  - a. All students of residential postsecondary institutions shall monitor their health daily for the following COVID-19 symptoms: subjective fever/chills; cough; shortness of breath or difficulty breathing; muscle or body aches; sore throat; headache; diarrhea; nausea or vomiting; congestion or runny nose; new loss of taste or smell.
  - b. Any student of a residential postsecondary institution who develops COVID-19 symptoms during the term of this Order shall:
    - i. If living in on campus housing, notify their postsecondary institution immediately and follow all public health requirements for isolation and quarantine;
    - ii. If living in off campus congregate student housing, defined as 10 or more students living in the same residence, notify their

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- local public health agency immediately and follow all public health requirements for isolation and quarantine;
- iii. Stay separated away from others (i.e. isolate) until all of the following criteria are met:
    1. No fever (of at least 100.4 degrees), without medication, for at least twenty-four (24) hours; and
    2. All other COVID-19 symptoms have improved; and
    3. At least ten (10) days have passed since symptoms first appeared, or longer if so directed by public health;
  - iv. Stay separated from all other people as much as possible. Use a separate bathroom, if available; if unavailable, disinfect all touched surfaces before leaving the bathroom;
  - v. Contact any health care provider prior to visiting its office so that arrangements can be made to prevent exposing other persons at the office;
  - vi. In the event of a medical emergency and need to call 911, notify dispatch personnel that they may have COVID-19 and put on a **Face Covering** before the emergency medical personnel arrives; and
  - vii. Cooperate with public health and school representatives regarding case investigation and contact tracing.
7. Students of postsecondary institutions are subject to COVID-19 screening, quarantine, and isolation requirements as follows:
- a. Screening requirements.
    - i. Screening for COVID-19 symptoms includes all of the following: fever of 100.4F or higher; cough; shortness of breath or difficulty breathing; muscle or body aches; sore throat; headache; diarrhea; nausea or vomiting; congestion or runny nose; new loss of taste or smell.
    - ii. Institutions shall implement screening protocols for students in campus housing and for access to other campus buildings, such as class buildings, recreational facilities, and dining halls. Restrict building access by non-residents, including outside guests, non-residential staff, and others. These restrictions may not apply when the law otherwise requires, such as allowing personal care attendants for students with disabilities.
    - iii. Students living in off campus congregate student housing, defined as 10 or more students living in the same residence,

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shall implement screening protocols for all residents that share off campus congregate student housing as well as any guests to the residence and maintain records of the screening results. Each off campus congregate student residence shall designate a contact person to work with public health and school representatives regarding implementation of public health requirements.

- b. Isolation requirements. Institutions for students in campus housing and students in off campus congregate student housing shall implement, in collaboration with public health, isolation protocols as needed for students who are symptomatic or test positive for COVID-19.
  - i. Isolate any symptomatic or COVID-19 positive cases away from others in the residence and limit the sharing of services, such as restrooms or kitchen facilities, with other residents to the greatest extent possible,
  - ii. notify public health immediately, no later than 24 hours from detection, and
  - iii. isolated individuals must remain in isolation without leaving the residence other than for medical care until released by public health;
- c. Quarantine requirements. Institutions for students in campus housing and students in off campus congregate student housing shall implement, in collaboration with public health, quarantine protocols as needed for students who are close contacts of a symptomatic individual or an individual who tests positive for COVID-19.
  - i. Quarantine for 14 days from the last date of exposure any close contacts, defined as individuals who were within 6 feet of an ill or symptomatic individual for 15 minutes or longer or other high risk contact defined by public health, and
  - ii. quarantined individuals may only leave the residence for medical care;
- d. Clean and disinfect the residence in accordance with CDC's shared or congregate housing guidance, found [here](#);
- e. Provide public health as soon as possible the information necessary for case investigation and contact tracing; and
- f. Implement testing for COVID-19 for all congregate student housing residents in accordance with the recommendations of public health.

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8. Institutions of higher education should utilize their student disciplinary process regarding students who are not complying with state and local public health orders.
- S. Ski Resorts.** Prior to opening a ski resort, the resort must do all of the following:
1. Work with the local community to create an opening plan. The plan must:
    - a. Comply with any guidance issued by CDPHE for ski resorts,
    - b. Phase in operations in a way to ensure the ski resort can be fully compliant with all guidelines,
    - c. Factor in the overall capacity that a community can safely host and follow all **Distancing Requirements**, and
    - d. Describe how the ski resort will assist the community in dealing with the increased volume of tourists during winter;
  2. Receive local government approval of the opening plan, either the county or municipality as appropriate;
  3. Submit the opening plan to the local public health agency for their review to ensure alignment with state and local guidance; and
  4. If approved by the local public health agency, the agency will submit the opening plan to CDPHE for final review and approval.

## IV. DEFINITIONS

- A. Bar** means a bar, tavern, brew pub, brewery, microbrewery, distillery pub, winery, tasting room, special licensee, club, and other place of public accommodation serving alcoholic beverages and, if serving food, only snacks and not kitchen-prepared meals.
- B. COVID-19 Dial or Dial** means the six levels, designated as **Green, Blue, Yellow, Orange, Red** and **Purple**, defined by CDPHE in which a county may allow businesses to operate and activities to occur based upon standard metrics regarding disease incidence, percent positivity, and hospitalization rates, with additional metrics required to be met for **Level Green**.
- 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 A**, 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 **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 A** of this Order.

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

1. Public health and safety (public health agencies, 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
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**, in compliance with the transportation guidance found [here](#).
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 **Individuals 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 **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 and activities within voter services and polling centers, county clerk offices, and other locations where election operations occur, including but not limited to the functions performed by election judges, signature gatherers/circulators, authorized watchers, and voters.

**E. 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.

**F. 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.

**G. 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.

**H. Individual at Risk of Severe Illness from COVID-19** means:

1. Individuals who are 65 years and older;
2. Individuals who have cancer;
3. Individuals who have chronic kidney disease;
4. Individuals who have chronic obstructive pulmonary disease;
5. Individuals who are immunocompromised (weakened immune system) from solid organ transplant;
6. Individual who have a body mass index of 30 or higher;
7. Individuals who have serious heart conditions, such as heart failure, coronary artery disease, or cardiomyopathies;
8. Individuals who have Sickle cell disease;
9. Individuals who have Type 2 diabetes mellitus;
10. Individuals who are pregnant;
11. Individuals who smoke; and
12. Other individuals determined to be high risk by a licensed healthcare provider.

- I. Indoor Events** means indoor activities like receptions, events, concerts, indoor markets, non-critical auctions, theaters, trade shows, or other indoor venues not covered in other sectors listed in this Order.
- J. 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. Services provided in **Limited Healthcare Settings** that are ordered by a medical, dental or veterinary practitioner, are subject to the requirements of PHO 20-29; otherwise, the services are subject to the requirements of PHO 20-36.
- K. 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 **Distancing Requirements**.
- L. 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 **Distancing Requirements** below. **Individuals 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 performing 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 as outlined in section III.S. Additionally, the permitted outdoor activities in this PHO do not include activities that would violate the **Distancing Requirements** defined in this Section IV.
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.

**M. 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.

**N. 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 A**.

**O. Non-Critical Retail** means any retail service that is not included in the list of critical retail services in **Appendix C**. 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.



- P. Outdoor Events** means outdoor activities such as outdoor receptions, events, fairs, rodeos, non-critical auctions, concerts, outdoor markets, or other outdoor venues not covered in any other sector in this Order. This does not include activities covered under delineated sectors in this Order such as **Restaurants, Houses of Worship, or Outdoor Guided Tours**.
- Q. 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**, as amended and extended.
- R. Recreation** means **Gyms** as defined in Section IV.F and outdoor recreation facilities and activities, such as playgrounds, tennis and pickleball courts, bike and motocross tracks, and outdoor swimming pools.
- S. Restaurant** means restaurants, food courts, cafes, coffeehouses, and other similar places of public accommodation offering food or beverage for on-premises consumption or from a licensed retail food establishment.
- T. Safer at Home** means individuals stay in your place of residence as much as possible, and avoid unnecessary social interactions.
- U. Smoking Lounge** means any establishment authorized at the state or local level to provide space for patrons to smoke or vape, indoors or outdoors, while at the establishment.
- V. 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**.

**V. VARIANCE REQUESTS.**

Any Colorado county that is in **Level Blue** or **Yellow** may request a site specific variance from CDPHE authorizing implementation of different restrictions for the requested site than what is required in this Order. The variance request must include the site requirements 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 requirements concerning variance requests are contained in **Appendix M**.

**VI. ENFORCEMENT**

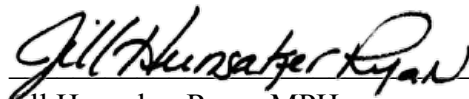
This Order will be enforced by all appropriate legal means. Local authorities are encouraged to determine the best course of action to encourage maximum compliance. Failure to comply with this order could result in penalties, including jail time, and fines, and may also be subject to discipline on a 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 Friday, November 20, 2020 and will expire in 30 days unless extended, rescinded, superseded, or amended in writing.

  
\_\_\_\_\_  
Jill Hunsaker Ryan, MPH  
Executive Director

November 20, 2020  
\_\_\_\_\_  
Date

**Appendix A. Critical Businesses List**

**Appendix B. Non-Critical Office-Based Businesses**

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**Appendix C: Critical and Non-Critical Retail Requirements**

**Appendix D: Non-Critical Manufacturing**

**Appendix E: Field Services**

**Appendix F: Personal Services**

**Appendix G: Limited Healthcare Settings**

**Appendix H: Restaurants**

**Appendix I: Indoor and Outdoor Events**

**Appendix J: Recreation**

**Appendix K: Outdoor Guided Services**

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

**Appendix M: County Site Specific Variance Requests**

## APPENDIX A: 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, should follow all of the requirements in this Order for their sector, and any applicable [CDPHE guidance](#), unless doing so would make it impossible to carry out critical functions, in which case they may exceed the sector restrictions to the minimum extent necessary to carry out critical functions. **Critical Retail** may not exceed 50% of the posted occupancy limit under all **Dial** levels. **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 **Distancing Requirements** and all PHOs currently in effect to the greatest extent possible and will be held accountable for doing so.

“**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
- Telecommunications and data centers
- Transportation and infrastructure necessary to support critical businesses

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- 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 for curbside, takeout and delivery, in compliance with the requirements of **Appendix H** of this Order
- Marijuana dispensary (only for the sale of medical marijuana or curbside delivery pursuant)
- Liquor stores for curbside, takeout and delivery
- Firearms stores

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- 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, following [case and outbreak guidance](#) for child care and schools
- 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, and may operate as authorized for **Life Rites** in Section III.L of this Order
- In-person pastoral services for individuals who are in crisis or in need of end of life services provided Distancing is observed to the greatest extent possible.
- **Houses of Worship** as authorized in Sections II and III of this Order
- Storage for **Critical Businesses**
- Animal shelters, animal boarding services, animal rescues, zoological facilities, animal sanctuaries, animal grooming, and other related facilities
- Moving services
- In person group counseling or recovery meetings for substance abuse or behavioral health following Distancing of 6 feet and no more than 10 participants
- Libraries

### 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

**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

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- 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, following [case and outbreak guidance](#) for child care and schools
- Government owned or leased buildings
- **Critical Government Functions**

### **13. Educational Institutions, for Purposes of providing Critical Services to Students and the General Public:**

- Pre-kindergarten through 12th grade public and private schools for the purpose of providing meals, housing, facilitating or providing materials for distance learning, and in consultation with the local public health agency providing in person learning as necessary, or other essential services to students as determined by the school or school district in consultation with the local public health agency. Such institutions are required to work with state and local public health officials and follow [case and outbreak guidance](#) for schools when cases of COVID-19 are suspected or confirmed in students or staff to determine transmission mitigation strategies, isolation, quarantine and shifting to remote learning.
- Postsecondary institutions, including private and public occupational schools, colleges and universities, for the purpose of facilitating remote learning, providing in person classroom or laboratory education only in limited circumstances when remote learning is not possible or appropriate, or performing essential functions, such as security, medical and mental health services, housing, food services, and critical research, provided that **Distancing Requirements** are observed.



## APPENDIX B: NON-CRITICAL OFFICE-BASED BUSINESSES

- I. Non-Critical Office-based Businesses** may operate at the level described in Section II of this Order for which the county in which they operate is approved, and must follow the requirements included in Section III.C of this Order, as well as the requirements contained in this **Appendix**.
- 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. maximize use of telecommuting and develop 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. pursuant to **Executive Order D 2020 138**, as amended and extended, require face coverings for all employees, volunteers, and vendors in public indoor spaces unless the individual is 10 years of age or younger, cannot medically tolerate a face covering, or is performing one of activities listed in Section II.M of **Executive Order D 2020 138**, as amended and extended;
  5. require gloves and masks for any customer interactions; and
  6. 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;

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2. pursuant to **Executive Order D 2020 138**, as amended and extended, require face coverings for all customers in public indoor spaces unless the individual is 10 years of age or younger, cannot medically tolerate a face covering, or is performing one of activities listed in Section II.M of **Executive Order D 2020 138**, as amended and extended;
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.

## APPENDIX C. CRITICAL AND NON-CRITICAL RETAIL REQUIREMENTS

- I. Non-Critical Retail** may operate at the level described in Section II of this Order for which the county in which they operate is approved. **Non-Critical Retailers** are encouraged to continue drive-through, curbside pick-up or delivery for longer term service wherever possible. **Critical** and **Non-Critical Retailers** must implement the requirements in Section III.C of this Order, in addition to the specific requirements in this **Appendix C**. Indoor malls are addressed separately in Section III of this **Appendix C**.
- 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 for both back-room and retail spaces.
  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.
  4. Maintain 6 foot distancing between patrons and employees;
  5. Effectively monitor employees' symptoms as listed in Section III.C;
  6. Require and provide face coverings for all employees, and gloves as necessary and appropriate;
  7. Provide dedicated, in-store hours for **Individuals at Risk for Severe Illness from COVID-19**.
- 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. Pursuant to **Executive Order D 2020 138**, as amended and extended, face coverings are required in public indoor spaces unless the individual is 10 years of age or younger, cannot medically tolerate a face covering, or is performing one of activities listed in Section II.M of **Executive Order D 2020 138**, as amended and extended.
  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;
  2. Require face coverings for all customers in public indoor spaces unless the individual is 10 years of age or younger, cannot medically tolerate a face covering, or is performing one of activities listed in Section II.M of **Executive Order D 2020 138**, as amended and extended;
  3. Limit the number of customers on the premises as needed to make 6 foot distancing between customers attainable;
  4. Provide decals and demarcation for waiting area in lines that meet **Distancing** criteria;
  5. Create signage encouraging **Individuals At Risk of Severe Illness from COVID-19** to refrain from shopping outside of dedicated hours set aside for them;
  6. Create signage to remind of the requirement for all individuals in public indoor spaces to wear a face covering, unless the individual is 10 years of age or younger, cannot medically tolerate a face covering, or is performing one of activities listed in Section II.M of **Executive Order D 2020 138**, as amended and extended, and to encourage the use of gloves by customers while on the premises; and
  7. Provide hand sanitizer and wipes at entrances and other high-traffic locations to the greatest extent possible.
- III. Retail Markets and Malls.** Indoor and outdoor market operators shall follow the **Indoor or Outdoor Event** requirements in **Appendix I**. Both individual vendors operating within the mall and the common space in indoor malls shall follow **Retail** requirements.

## APPENDIX D: NON-CRITICAL MANUFACTURING

- I. Non-Critical Manufacturing** may operate at the level described in Section II of this Order for which the county in which they operate is approved, and must follow the requirements included in Section III.C of this Order, as well as all of the requirements of this **Appendix**.
- 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:
    - a. Limiting group interactions to keep any group less than ten (10) people by
      - i. staggering of shift changes, breaks, lunches, etc., and
      - ii. eliminating all-staff in-person meetings or lunches;
    - b. Modifying the flow of people traffic to minimize contacts, such as arranging one-way flow of work and people;
    - c. Implementing 6 foot distancing and impermeable barriers between employees whenever possible;
    - d. 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
    - e. 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:
    - a. Daily deep cleaning and disinfecting and full cleaning in-between shifts in accordance with [CDPHE guidance](#); and
    - b. 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, in which case reasonable accommodations should be pursued to maintain the safety and health of all parties;
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, and individuals are required pursuant to Executive Order D 2020 138 to wear a face covering while taking public transportation, unless the individual is 10 years of age or younger, cannot medically tolerate a face covering, or is performing one of activities listed in Section II.M of **Executive Order D 2020 138**, as amended and extended, in which case reasonable accommodations should be pursued to maintain the safety and health of all parties.

**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, unless the individual is 10 years of age or younger, cannot medically tolerate a face covering, or is performing one of activities listed in Section II.M of **Executive Order D 2020 138**, as amended and extended, in which case reasonable accommodations should be pursued to maintain the safety and health of all parties; and
4. Encourage 6 foot distancing and implement procedures to limit person-to-person interaction in inbound/outbound shipping areas.

## APPENDIX E: FIELD SERVICES

**I. Field Services** may operate at the level described in Section II of this Order for which the county in which they operate is approved, and must follow the requirements included in Section III.C of this Order, as well as all of the requirements of this **Appendix**.

**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 **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, office spaces, or other public indoor 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; and
10. real estate open houses must follow the **Indoor Events** requirements in Section III.M. and **Appendix I** of this Order.

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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 and pursuant to **Executive Order D 2020 138**, as amended and extended, require face coverings if the services are provided in a public indoor space unless the individual is 10 years of age or younger, cannot medically tolerate a face covering, or is performing one of activities listed in Section II.M of **Executive Order D 2020 138**, as amended and extended.



## APPENDIX F: PERSONAL SERVICES

**I. Personal Services** may operate at the level described in Section II of this Order for which the county in which they operate is approved, and must follow the requirements included in Section III.C of this Order, as well as all of the requirements of this **Appendix**.

**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. Implement the capacity restrictions in Section II of this Order on a per room basis. 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;
  - b. change gloves and wash hands between every individual or pet served;
  - c. clean and disinfect all shared equipment and tools between every individual or pet served; and
  - d. 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.
  - e. for services where the client cannot wear a mask (facials, beard trims, etc.), the employee or practitioner is strongly encouraged to wear a medical-grade mask whenever possible, and must wear a face shield in addition to their mask.

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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;
    - 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 follow **Distancing Requirements**;
  2. require customers to wear face coverings, except
    - a. for personal training in a pool,
    - b. if the service being performed requires the removal of a mask (e.g. a facial, lip waxing or beard trim), or
    - c. where the individual cannot medically tolerate a face covering, in which case reasonable accommodations should be pursued to maintain the safety and health of all parties; and
    - d. 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.

## APPENDIX G: LIMITED HEALTHCARE SETTINGS

**I. Limited Healthcare Settings** may operate at the level described in Section II of this Order for which the county in which they operate is approved, and must follow the requirements included in Section III.C of this Order, as well as all of the requirements of this **Appendix**.

**Limited Healthcare Settings** may conduct 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.<sup>1</sup>
  2. The practice must implement strict infection control policies as recommended by the CDC.<sup>2</sup>
  3. The practice must ensure a minimum of 6 feet of separation between clients and patients, when not directly performing service, 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; however, acupuncturists may substitute good hand hygiene by thoroughly washing hands before and after seeing each patient for the gloves if their licensing requirements and standards so allow;
    - b. change gloves and wash hands between every patient;
    - c. clean and disinfect all shared equipment and tools between every patient; and

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

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

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- 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
  - e. for services where the client cannot wear a mask, the employee or practitioner must wear a face shield in addition to their mask.
2. Services with low personal contact must implement the following:
    - a. maintain a minimum of six 6 feet of separation between customers;
    - 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, unless the individual cannot medically tolerate a face covering, or is performing one of the enumerated activities in Section II.M of **Executive Order D 2020 138**, as amended and extended. 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 **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.
7. The practice should continue to maximize the use of telehealth and virtual office or clinic visits.

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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 if performing voluntary and elective surgeries and procedures, **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 urgency<sup>3</sup>;
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 **Distancing Requirements** and all PHOs currently in effect to the greatest extent possible.

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<sup>3</sup> Urgent and emergent care should continue in accordance with OHA and CMS guidance.

## APPENDIX H: RESTAURANTS

- I. Restaurants, and Bars** that serve food from a retail food licensee with tables spaced at least 6 feet apart and set seating for on-premise consumption, may operate at the level described in Section II of this Order for which the county in which they operate is approved, and must follow the requirements included in Section III.C of this Order, as well as all of the requirements of this **Appendix. Restaurants** remain encouraged to continue curbside pick up and delivery, including alcohol pick up and delivery.
- 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 10 people or less, and in **Level Red** tables are restricted to household members only.
    - d. All employees must wear facial coverings that cover the nose and mouth, unless the individual cannot medically tolerate a face covering, or is performing one of the enumerated activities in Section II.M of **Executive Order D 2020 138**, as amended and extended.
    - 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.
    - g. Ensure proper ventilation per [OSHA guidance](#).
  2. **Restaurants, and Bars** that serve food from a retail food licensee with tables at least 6 feet apart and set seating for on-premise consumption, 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 by:
      - i. eliminating communal and seat yourself options
      - ii. providing a hostess seating option or staffing the dining area to ensure cleaning and disinfection between prior to the next seating
      - iii. allowing bar seating options only if the bar is not being used for

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- bar service or if there is a clearly designated and separated section of the bar that is not being used for bar service;
- c. Eliminating customer service buffets;
  - d. Provide appropriate signs or markings within the **Restaurant or Bar** to space lines, indicate which tables are unavailable, prohibit games and dance floors that encourage gatherings, and direct foot traffic; and
  - e. Performers in a restaurant or bar whose performance includes forced exhalation that increases the potential to aerosolize respiratory droplets, such as speaking or shouting, singing, playing some instruments, or physical exertion, must maintain a minimum of 25 feet of distance from the patrons.
3. **Restaurants, and Bars** that serve food from a retail food licensee with tables spaced at least 6 feet apart and set seating for on-premise consumption, 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 and high touch areas 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.
  - d. Eliminate multi-use utensils (such as hot dog roller tongs, bulk food bins and coffee urns) at self-service stations that have and implement touchless self-service wherever practicable.
- 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 face coverings at all times, unless the individual cannot medically tolerate a face covering, in which case reasonable accommodations should be pursued to maintain the safety and health of all parties, and encourage the use of gloves when in contact with customers or goods.

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- b. Require face coverings and encourage gloves for vendors, suppliers, and contract workers entering the licensed establishment, except where doing so would inhibit that individual's health, in which case reasonable accommodations should be pursued to maintain the safety and health of all parties.
    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 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 off lobbies or waiting areas completely, or establish customer waiting areas that maintain proper Distancing from other guests, and
    - b. Restrict standing or congregating in public spaces such as the bar area, entrance or exit; and
  4. Pursuant to **Executive Order D 2020 138**, as amended and extended, require facial coverings be worn by customers when not seated for dining, and consider refusing service to customers who refuse to adhere to hygiene and Distancing requirements.



## APPENDIX I: INDOOR AND OUTDOOR EVENTS

- I. Indoor and Outdoor Events** may operate at the level described in Section II of this Order for which the county in which they operate is approved, and must follow the requirements included in Section III.C of this Order, as well as all of the requirements of this **Appendix**.
- A.** Venue size is determined based on usable space per room or designated activity. An indoor event or outdoor designated activity that includes spectators may include both the activity space and the spectator space, or these spaces may be separated, and the venue must apply the appropriate capacity limits to the size of each designated space. If participants in the designated activity may also at times move into the spectator space, those participants will count for purposes of the capacity limit for the spectator space if that space is separately defined from the designated activity space.
1. For seated **Indoor and Outdoor Events**, where the attendees have minimal movement, such as purchasing concessions or using the restroom facilities, the calculation of the available space may be based on 6 feet distancing between non-household contacts and does not require the use of the **Distancing Space Calculator in Levels Blue, Yellow and Orange**.
  2. If an **Indoor or Outdoor Event** has several different facets, some of which are seated with minimal movement, others of which include movement such as walking around fairgrounds or through exhibits in a museum, only the space for the seated events with minimal movement may be calculated using 6 feet distancing without the use of the **Distancing Space Calculator**.
- B.** Designated activities or areas must be separated by a minimum of 50 feet from each other, maintain separate entrances and exits, and must minimize the use of shared facilities like restrooms
- C.** Performers are not included in capacity limits as long as they do not join the spectator or patron areas at any time and, for performers whose performance includes forced exhalation that increases the potential to aerosolize respiratory droplets, such as speaking or shouting, singing, playing some instruments, or physical exertion, the performers must remain at least 25 feet from attendees. If performers join the patron spaces, they must be included in the capacity limit numbers. Performers should also use a separate entrance and exit from spectators or patrons.

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- D.** Operators, employees and attendees must wear face coverings unless the individual is age 10 or under, cannot medically tolerate a face covering, or is performing one of the enumerated activities in Section II.M of **Executive Order D 2020 138**, as amended and extended. Individuals in public indoor settings, including performers, must follow the face covering requirements in **Executive Order D 2020 138**, as amended and extended.
- E.** Operators, organizers or employers must implement employee screening protocols for all employees as described in Section III.C.3.g of this Order, and exclude ill or symptomatic individuals.
- F.** Operators and organizers must manage the event or activity to comply with the capacity limits per activity at all times, and further manage traffic flow between designated activities to minimize or eliminate mixing of groups including the use of single direction traffic flow in and out of the venue and seating area.
- G.** Food sold in these settings must follow the **Restaurant** requirements in Section III.J and **Appendix H** of this Order.
- H.** Ventilation in an indoor venue must meet OSHA guidance.
- I.** Indoor market operators must follow the **Indoor Events** requirements in Section III.M and **Appendix I** of this Order, outdoor market operators must follow the **Outdoor Events** requirements in Section III.M and **Appendix I** of this Order. Individual vendors in these settings must follow the **Retail** requirements in Section III.E and **Appendix C** of this Order.
- J.** Drive-in events such as theaters or fireworks displays are authorized to operate, observing the personal gathering restrictions for their level of the **Dial**, so long as participants remain in their vehicles unless seeking minimal services, the vehicles remain a minimum of 6 feet apart, and only minimal common services are available such as concessions and restrooms.

## APPENDIX J: RECREATION

- I. Individuals may participate in personal recreation and operators may operate **Gyms**, outdoor recreational facilities and activities and **Organized Recreational Youth or Adult League Sports** at the level described in Section II of this Order for which the county in which they operate is approved, and must follow the requirements included in Section III.C of this Order, as well as all of the requirements of this **Appendix**. 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.
- A. **Campgrounds.** Campgrounds may be 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.
- B. Outdoor recreation activities are permitted as follows:
1. Playgrounds and outdoor recreation facilities, such as tennis and pickleball courts, should clean and disinfect high touch areas frequently.
  2. Outdoor swimming pools capacities do not change in **Levels Blue, Yellow and Orange**; instead, they may operate at 50% capacity not to exceed 50 people in all three levels. In **Levels Red and Purple**, outdoor swimming pools may operate at 25% capacity not to exceed 10 people. Frequently touched surfaces, shared objects, and bathrooms should be cleaned and disinfected every hour.
- C. **Organized Recreational Youth or Adult League Sports**
1. Parents may attend youth sports activities but must remain 6 feet apart from non-household members. Spectators are authorized and must follow the **Indoor and Outdoor Events** requirements. Adjacent fields of play should be distanced to allow for at least 50 feet of distancing between two fields of play and their respective spectator sections.
  2. All individuals in public indoor spaces must wear a face covering unless the individual is 10 years of age or younger, cannot medically tolerate a face

covering, or is performing one of the enumerated activities in Section II.M of **Executive Order D 2020 138** as amended and extended.

3. The sports leagues and teams must establish protocols for:
  - a. Screening both athletes and spectators for symptoms and COVID-19 exposures to ensure they are symptom-free before they are deemed able to attend or play;
  - b. Isolation and quarantine for ill or exposed individuals; and
  - c. Requiring athletes with confirmed or presumed COVID-19 infection to obtain clearance from their health care provider for return to sports participation
4. The sports league must retain records of who played in case later disease outbreak investigations become necessary.
5. The sports league must notify and cooperate with the local public health agency regarding any cases of COVID-19.

**D. Gyms**

1. Gyms must maintain 6 feet distancing between patrons, discourage the sharing of equipment, and clean and disinfected equipment between uses.
2. All individuals must wear face coverings in **Gyms**, unless the individual is 10 years of age or younger, cannot medically tolerate a face covering, or is performing one of the enumerated activities in Section II.M of **Executive Order D 2020 138** as amended and extended.

- E. Competitive Events.** 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.

## APPENDIX K: OUTDOOR GUIDED SERVICES

- I. Outdoor Guided Services**, may, if authorized by the local jurisdiction, may operate at the level described in Section II of this Order for which the county in which they operate is approved, and must follow the requirements included in Section III.C of this Order, as well as all of the requirements of this **Appendix**. Additionally, specific **Outdoor Guided Services** may operate in accordance with the following capacity requirements established per service type:
- A.** Non-guided equipment rentals, subject to compliance with the retail requirements in **Appendix C** of this Order;
  - B.** Developed hot springs may operate in accordance with the outdoor pools requirements in **Appendix J** of this Order;
  - C.** The following Outdoor Guided Services must have their plans approved by the local public health agency in their jurisdiction:
    - 1. Outdoor recreation activities at ski resorts (mountain biking, hiking, climbing walls, mountain coasters, ropes courses, adventure parks, zip lines, etc) in accordance with Section III.S of this Order;
    - 2. Zip lines, ropes courses, outdoor artificial climbing walls, or outdoor sports adventure centers not affiliated with ski resorts; and
    - 3. Scenic trains must have every local public health agency in each jurisdiction through which the train operates has approved the train's plans.
- II. Outdoor Guided Services** operators 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. Follow **Retail** or **Restaurant** guidelines where applicable.
    - 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. Where a distance of 6 feet can be ensured between household units, more than two households per vehicle/craft are permitted.
      - c. 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.
      - d. Effective November 9, 2020, follow the transportation guidelines found

[here](#).

4. Conduct staging operations such as customer check-ins and end-of-trip operations outdoors with parties from different households spaced 6 feet apart.
5. 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 in public indoor spaces pursuant to **Executive Order D 2020 138**, as amended and extended, and also during staging and disembarking operations, unless the individual is 10 years of age or younger, cannot medically tolerate a face covering, or is participating in one of the activities listed in Section II.M of **Executive Order D 2020 138**, as amended and extended, in which case reasonable accommodations should be pursued to maintain the safety and health of all parties. 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 referred to state or company support services.

**APPENDIX L: CHILDREN’S DAY CAMPS, RESIDENTIAL CAMPS, YOUTH SPORTS DAY CAMPS AND EXEMPT SINGLE SKILL-BUILDING YOUTH CAMPS**

- I. Summer camps, sports camps, and residential camps may operate at the level described in Section II of this Order for which the county in which they operate is approved, and must follow the requirements included in Section III.C of this Order, as well as all of the requirements of 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. 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. If the space is large enough to accommodate multiple groups and maintain 6 feet physical distancing, multiple groups are permitted.
    - b. Require face coverings during transportation in camp vehicles to and from the camp, unless the individual is 10 years of age or younger or cannot medically tolerate a face covering, in which case reasonable accommodations should be pursued to maintain the safety and health of all parties.
  - 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, and require face coverings for all individuals in public indoor spaces unless the individual is 10 years of age or younger, cannot medically tolerate a face covering, or is participating in an activity listed in Section II.M of **Executive Order D 2020 138**, as amended and extended.
    - 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

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- h. Train camp staff and volunteers on the requirements of this Order, as well as prevention, transmission, and care of COVID-19 illness.
- 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](#)
    - 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 in public indoor spaces and encourage the use outdoors, unless the individual is 10 years of age or younger, cannot medically tolerate a face covering, or is participating in an activity listed in Section II.M of **Executive Order D 2020 138**, as amended and extended, in which case reasonable accommodations should be pursued to maintain the safety and health of all parties.
  - 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.
  - 7. Prohibit family and buffet style food services, self service and counter food service, and other configurations that require campers to share utensils. Clean and disinfect dining areas and high touch surfaces between groups.
  - 8. For residential camps, disallow non-essential visitors to the camp and prohibit external community organizations from sharing the camp space during the camp session.



## APPENDIX M: COUNTY SITE SPECIFIC VARIANCE REQUESTS

### I. BACKGROUND

The restrictions contained in this Order may be subject to revision through a county variance process established by CDPHE. Any county meeting the **Level Blue** or **Yellow** metrics as described in Section II of this Order that desires to apply for a site specific variance from part of the public health order may do so if they meet certain criteria established below. These variances allow very large indoor and outdoor venues that meet the criteria to operate in an alternate fashion after receiving approval from the county's local public health agency and other local officials, and then final approval from the CDPHE. The application must be submitted by the local public health agency directly to CDPHE.

### II. VARIANCE APPLICATION REQUIREMENTS

#### A. Application Requirements

1. **Eligibility**
  - a. Counties that are in **Level Blue** on the **Dial** may apply for **outdoor** and **indoor** site-specific variances.
  - b. Counties that are in **Level Yellow** on the **Dial** may only apply for **outdoor** site-specific variances.
  - c. Only venues that exceed 30,000 square feet will be considered for a variance.
  - d. If a venue has multiple uses or sectors included in it, the variance request must specify how the venue proposes to meet the requirements for each use or sector.
2. **Application Submission.** Prior to submitting a variance application to CDPHE, counties that receive a request for a site specific variance must review and determine whether to support the request. If the county supports the site specific variance, the local public health agency may submit a variance application to CDPHE. The application form must include all of the following:
  - a. Identify the site and capacity limit(s) the county is requesting a variance from.
  - b. Describe the disease prevention measures the county will require of the site to meet the state's orders.
  - c. Use the [Distancing Space Calculator](#) to determine capacity.
  - d. Use the [outdoor](#) and [indoor](#) event guidance to create designated spaces within the site.

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- e. Documentation of approval of the variance request must be included in the variance application from all of the following:
  - i. The local public health agency;
  - ii. Local hospitals verify that they have the capacity to serve all people needing their care;
  - iii. 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
  - iv. 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.

**B. Application Review.** Site specific variance requests will be evaluated based on a number of factors, including:

1. County is in **Level Blue** or **Yellow** of the **COVID-19 Dial**;
2. Square footage of venue;
3. Map of venue with occupied floor space;
4. Capacity request, including both the percent and total number of people;
5. Ventilation plan if an indoor site;
6. Sanitation plan, including handwashing stations, hand sanitizer and restrooms;
7. Mask wearing for all staff and participants;
8. Health exclusion considerations for staff and participants;
9. Distancing requirements;
10. Designated areas for participants and activities;
11. Signage for participants and traffic flow requirements;
12. Risk assessment analysis; and
13. Parking and transportation plan.

### III. LIMITATIONS ON VARIANCES

**A.** A county in **Level Blue** or **Yellow** may apply to CDPHE for up to 10 variances per 100,000 people for indoor and outdoor venues that exceed 30,000 square feet.

**B.** CDPHE will not grant a variance request for any of the following:

1. A higher capacity than 50%;
2. Removal from the requirements of the state's orders generally;
3. Reduction or elimination of protections for **Individuals at Risk of Severe Illness from COVID-19**, as defined in state's orders;

4. Modifications of the requirements of **Public Health Order 20-29: Voluntary and Elective Surgeries and Procedures**;
5. Modifications to the requirements for nursing facilities, assisted living residences or intermediate care facilities in **PHO 20-20**; or
6. Modification of the mask or face covering requirements.

#### **IV. SUSPENSION, RESCISSION OR TERMINATION OF VARIANCES**

- A.** If a site that has an approved variance experiences two COVID-19 cases linked to the site, the county must work with the site to implement mitigation strategies to reduce or eliminate further spread of disease. CDPHE may suspend the variance at any time, as deemed necessary, to mitigate disease spread. For counties moving to **Level Red**, any site specific variances will be reviewed to determine if the variance should be suspended. Site specific variances in counties moving to **Level Purple** are automatically suspended when the move to **Level Purple** is effective, unless otherwise authorized to remain in place by CDPHE.
- B.** Approved site specific variances may also be suspended by the local public health agency. Local public health agencies may also choose to maintain approved site specific variances 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 CDPHE.
- C.** Suspension or rescission of a site specific variance will reinstitute the requirements of this Order at the level for which the county is approved at the time of suspension or rescission for that site.
- D.** All variances granted pursuant to this Order remain in effect until the sooner of:
  1. The county moves to a level where the variance is no longer authorized, or to a level where the variance is no longer necessary;
  2. The variance is rescinded pursuant to the terms of the variance approval by CDPHE, rescinded for other reasons by CDPHE, or rescinded by the county; or
  3. This Order expires without further extension or is terminated.
- E.** Counties that are unwilling or unable to implement mitigation strategies or take enforcement actions as warranted are subject to suspension or rescission of variances. Counties that choose to not comply with executive orders, public health orders, or an approved variance will be subject to the loss of emergency preparedness or other funds.



EXHIBIT J

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

**Civil Action No.** \_\_\_\_\_

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.

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**VERIFIED COMPLAINT**

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Plaintiffs submit the following Verified Complaint:

**I. INTRODUCTION**

1. Today in Colorado it is perfectly legal for hundreds of shoppers to pack themselves cheek by jowl into a Lowes. But if 50 people meet to worship God in a small rural church, they do so at the risk of being fined and imprisoned. Plaintiffs feel as though they have stepped through the looking glass into a world where the right to shop for gardening supplies and home improvement materials is protected by the Constitution, while meeting as a body to worship God corporately has been relegated to the category of unnecessary of even superfluous. Plaintiffs call upon the Court to come to their aid, vindicate their religious liberties under the First Amendment to the United States Constitution, and remedy the surreal state of affairs in which they inexplicably find themselves.

## II. PARTIES

2. High Plains Harvest Church (“HPHC” or the “Church”) is a small church located at 108 1st Street, Ault, Colorado 80610. HPHC is a religious nonprofit organization. HPHC brings this action on its member’s behalf. HPHC has associational standing because (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to its purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit. Each of HPHC’s members would have standing to assert claims for breach of their constitutional rights as set forth herein. The interest HPHC seeks to protect, especially the interest in the free exercise of religion, is germane to HPHC’s purpose. The claims asserted herein do not require the participation of individual members. HPHC seeks a declaration, injunction, and other prospective relief, and it can reasonably be supposed that the remedies, if granted, will inure to the benefit of those members of HPHC actually injured.

3. Plaintiff Mark Hotaling (“Hotaling”) is a resident of Colorado.

4. Defendant Jared Polis (“Governor Polis”) is the Governor of Colorado. Governor Polis is sued in his official capacity only. All of Governor Polis’s actions described herein were taken under color of law.

5. Defendant Jill Hunsaker Ryan (“Director Ryan”) is the Executive Director of the Colorado Department of Public Health and Environment. Director Ryan is sued in her official capacity only. All of Director Ryan’s actions described herein were taken under color of law.

## III. JURISDICTION AND VENUE

6. This action arises under the Constitution and laws of the United States, and is brought pursuant to Title 42 U.S.C. § 1983.

7. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343.

8. The Court may declare the legal rights and obligations of the parties in this action pursuant to 28 U.S.C. § 2201 because the action presents an actual controversy within the Court's jurisdiction.

9. Jurisdiction supporting Plaintiffs' claim for attorney's fees and costs is conferred by 42 U.S.C. § 1988.

10. Venue is proper in the District of Colorado pursuant to 28 U.S.C. § 1391(b). All of the events alleged herein occurred within the State of Colorado (the "State"), and all of the parties were residents of the State at the time of the events giving rise to this litigation.

#### **IV. FACTUAL BACKGROUND**

11. HPHC's vision is to be a Christ-centered, rural, regional church that makes a genuine difference in the hearts of people throughout northern Colorado. The Church seeks to create an environment where each person is: cultivating daily, life-changing intimacy with the Savior; experiencing biblical community with others in the body of Christ; using their time, talents, and treasures to further God's kingdom; engaging in intentional discipleship and ministry; and bringing the Gospel into their sphere of influence with word and action.

12. Hotaling is a former Navy SEAL and a service-disabled veteran. After returning home from the Navy, Hotaling followed the Lord's call to serve Him full-time. Hotaling is a devout Christian and a pastor in the Church. Until the recent COVID-19 outbreak, Hotaling frequently attended and/or led services at the Church. He typically attended and/or led three to

four services and/or other religious gatherings per week. Hotaling has a sincerely held religious belief that in-person attendance at church is central to his faith.

13. In response to the presence of COVID-19 in Colorado, on April 26, 2020, Governor Polis issued his so-called “Safer at Home” order, Executive Order, D 2020 044 (the “Executive Order”). A copy of the Executive Order is attached as Exhibit A.

14. In the Executive Order Governor Polis directed Director Ryan to issue a public health order “[prohibiting] public gatherings of ten (10) persons or more in both public spaces and private commercial venues.” Executive Order II.H.3.

15. On May 14, 2020 Director Ryan issued Third Amended Public Health Order 20-28 Safer at Home (the “PHO”). The PHO “sets forth the requirements for implementation of [the Executive Order], as directed by Governor Polis.” A copy of the PHO is attached as Exhibit B.

16. The PHO prohibits all public and private gatherings greater than ten individuals except for “Necessary Activities.” PHO I. C. There is no numerical limit on the number of persons who may be present when “Necessary Activities” are conducted. Religious worship services are not considered Necessary Activities under the PHO.

17. “Necessary Activities” do include activities associated with “Critical Businesses.” PHO III. A. 4. “Critical Businesses” are listed in Appendix F to the PHO and include numerous business activities, including grocery stores; produce stands; gas stations; convenience stores; marijuana dispensaries; liquor stores; gun stores; funeral homes, airlines, mining operations such as oil and gas extraction, hardware stores; laundromats; banks; law offices; and accounting offices.



18. The PHO states that it “will be enforced by all appropriate legal means,” and that “[f]ailure to comply with this order could result in penalties, including jail time, and fines . . .” PHO, VI. A previous version of the PHO invoked the authority of C.R.S. § 25-1-114 to impose criminal penalties.

19. Director Ryan has also issued “Guidance for Places of Worship” to implement the Executive Order (the “Guidance”). A copy of the Guidance is attached as Exhibit C. The Guidance states that religious gatherings are permitted only as long as the gatherings are with 10 people or fewer. Guidance, p. 1.

20. The Executive Order, the PHO and the Guidance shall be referred to herein collectively as the “Orders.”

21. On May 25, 2020, Hotaling went to a local Lowes. He observed literally hundreds of customers going in and out of the store. The parking lot was packed to near capacity, and drivers were circling in hopes of finding a parking spot. See Exhibit D.

22. The 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.

23. The Bible commands Christians not to forsake the gathering together of believers. Hebrews 10:24-25. In-person corporate worship is a fundamental tenet of Christian practice and has been for nearly 2,000 years.

24. HPHC and its members, including Hotaling, have a sincerely held religious belief that the physical corporate gathering of believers is a central element of religious worship commanded by the Lord.

25. It is a substantial burden on the religious exercise of HPHC and its members, including Hotaling, if they cannot meet for in-person corporate worship as a body of believers.

26. HPHC in furtherance of the sincerely held religious beliefs of its members, desires to recommence in-person worship services.

27. In all services, HPHC and Hotaling will following CDC guidelines for faith communities. *See Centers for Disease Control and Prevention Interim Guidance for Communities of Faith*, [https://www.cdc.gov/coronavirus/2019-ncov/php/faith-based.html?mod=article\\_inline](https://www.cdc.gov/coronavirus/2019-ncov/php/faith-based.html?mod=article_inline). These guidelines include:

- Encouraging staff and congregants to maintain good hand hygiene
- Encouraging use of cloth face coverings among staff and congregants
- Cleaning and disinfecting frequently touched surfaces at least daily and shared objects in between uses
- Promoting social distancing at services and other gatherings, ensuring that clergy, staff, choir, volunteers and attendees at the services follow social distancing throughout services

28. Hotaling and HPHC also intend to follow the social distancing standards set forth in Director Ryan's Guidance.

29. Hotaling expects approximately 50 people to attend the in-person services.

30. To the best of Hotaling's knowledge, no member of HPHC has COVID-19.

31. The Church and Hotaling reasonably fear prosecution, including fines, arrest, and jail, if they proceed with this plan to meet for in-person corporate worship in a group of more than ten worshipers.

32. Governor Polis and Director Ryan have actively enforced the Orders and declared their intention to continue to do so.

33. On April 14, 2020, United States Attorney General William Barr issued a statement declaring the Department of Justice opposes discrimination against religious activity in the context of their COVID-19 responses. In pertinent part, the statement said:

even in times of emergency, when reasonable and temporary restrictions are placed on rights, the First Amendment and federal statutory law prohibit discrimination against religious institutions and religious believers. **Thus, government may not impose special restrictions on religious activity that do not also apply to similar nonreligious activity. For example, if a government allows movie theaters, restaurants, concert halls, and other comparable places of assembly to remain open and unrestricted, it may not order houses of worship to close, limit their congregation size, or otherwise impede religious gatherings.** Religious institutions must not be singled out for special burdens. . . . where a state has not acted evenhandedly, it must have a compelling reason to impose restrictions on places of worship and must ensure that those restrictions are narrowly tailored to advance its compelling interest.

April 14, 2020 Statement of United States Attorney General William Barr, <https://www.justice.gov/opa/pr/attorney-general-william-p-barr-issues-statement-religious-practice-and-social-distancing-0> (last accessed May 24, 2020) (emphasis added).

**V. FIRST CLAIM FOR RELIEF**  
**42 U.S.C. § 1983 – Violation of First Amendment Freedom of Religion**

34. Plaintiffs hereby incorporate all other paragraphs of this Complaint as if fully set forth herein.

35. The Free Exercise Clause of the First Amendment to the United States Constitution, as applied to the states by the Fourteenth Amendment, prohibits the State from abridging Plaintiffs' rights to free exercise of religion.

36. Plaintiffs have sincerely held religious beliefs that the Bible is the infallible, inerrant word of the Lord Jesus Christ and they are to follow its teachings.

37. Plaintiffs have sincerely held religious beliefs, rooted in Scripture’s commands (e.g., Hebrews 10:25), that followers of Jesus Christ are not to forsake the assembling of themselves together, and that they are to do so even more in times of peril and crisis. Indeed, the entire purpose of the Church (in Greek “*ekklesia*,” meaning “assembly”) is to assemble together Christians to worship Almighty God.

38. The Orders, on their face and as applied, impermissibly burden Plaintiffs’ sincerely held religious beliefs, compel Plaintiffs to either change those beliefs or to act in contradiction to them, and force Plaintiffs to choose between the teachings and requirements of their sincerely held religious beliefs in the commands of scripture and the State’s regulations.

39. The Orders, on their face and as applied, are neither neutral nor generally applicable, but rather discriminate against the religious beliefs, speech, assembly, and viewpoint of Plaintiffs.

40. The State lacks a compelling, legitimate, or rational interest in the Orders’ application of different standards for churches and faith-based gatherings than those applicable to exempted businesses and other non-religious entities.

41. Even if the Orders’ restriction on faith-based gatherings were supported by a compelling interest, they are not the least restrictive means to accomplish the government’s purported interest.

42. The Orders, on their face and as applied, fail to accommodate Plaintiffs’ sincerely held religious beliefs.

43. The Orders, on their face and as applied, burden Plaintiffs’ sincerely held religious beliefs while at the same time setting up a pervasive system of individualized exemptions that permit other similarly situated businesses or non-religious entities to continue

operations while prohibiting faith-based gatherings, such as Plaintiffs' church and religious gatherings, from operating.

44. The Orders, on their face and as applied, have caused, are causing, and will continue to cause Plaintiffs immediate and irreparable harm, and actual and undue hardship.

45. Plaintiffs have no adequate remedy at law to correct the continuing deprivation of their liberties.

46. Plaintiffs respectfully pray for the relief against the State as hereinafter set forth in their prayer for relief.

**VI. SECOND CLAIM FOR RELIEF**  
**42 U.S.C. § 1983 – Violation of Right to**  
**Equal Protection Under the Fourteenth Amendment**

47. Plaintiffs hereby incorporate all other paragraphs of this Complaint as if fully set forth herein.

48. The Fourteenth Amendment to the United States Constitution guarantees Plaintiffs the right to equal protection under the law.

49. The Orders, on their face and as applied, are an unconstitutional abridgment of Plaintiffs' right to equal protection because 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.

50. The Orders, on their face and as applied, impermissibly discriminate between certain non-religious gatherings and religious or faith-based gatherings.

51. The State lacks a compelling, legitimate, or rational interest in the Orders' application of different standards for churches and faith-based gatherings than those applicable to exempted businesses or non-religious entities.

52. The Orders, on their face and as applied, are not the least restrictive means to accomplish any permissible government purpose sought to be served.

53. The Orders, on their face and as applied, do not have a rational basis.

54. The Orders, on their face and as applied, are irrational and unjustifiable and impose irrational and unjustifiable restrictions on Plaintiffs' religious or faith-based gatherings.

55. The Orders, on their face and as applied, have caused, are causing, and will continue to cause Plaintiffs immediate and irreparable harm, and actual and undue hardship.

56. Plaintiffs have no adequate remedy at law to correct the continuing deprivation of their most cherished liberties.

57. Plaintiffs respectfully pray for the relief against the State as hereinafter set forth in their prayer for relief.

**VII. THIRD CLAIM FOR RELIEF**  
**42 U.S.C. § 1983 – Violation of First Amendment Free Speech Rights**

58. Plaintiffs hereby incorporate all other paragraphs of this Complaint as if fully set forth herein.

59. The Orders violate Plaintiffs' freedom of speech by prohibiting them from engaging in religious speech through their church services which occur exclusively on private property.

60. The Orders give government officials unbridled discretion with respect to enforcement of the Orders and the imposition of any penalty, making the Orders susceptible to both content- and viewpoint-based discrimination.

61. Prohibiting or punishing Plaintiffs' religious speech does not serve any legitimate, rational, substantial, or compelling governmental interest.

62. The State has alternative, less restrictive means to achieve any interest that it might have.

63. The Orders violate the Free Speech Clause of the First Amendment to the United States Constitution, both facially and as applied.

64. In the absence of declaratory and injunctive relief, Plaintiffs will be irreparably harmed.

65. Plaintiffs respectfully pray for the relief against the State as hereinafter set forth in their prayer for relief.

### **VIII. PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for relief as follows:

A. That the Court issue a Temporary Restraining Order restraining and enjoining Governor Polis, Director Ryan and all persons in active concert or participation with them, from enforcing, attempting to enforce, threatening to enforce, or otherwise requiring compliance with the Orders or any other order to the extent any such order prohibits in-person services at the Church if the Church meets the social distancing and hygiene guidelines pursuant to which the State allows so-called “Necessary Activities” to be conducted without numerical limit.

B. That the Court issue a Preliminary Injunction pending trial, and a Permanent Injunction upon judgment, restraining and enjoining Governor Polis, Director Ryan and all persons in active concert or participation with them, from enforcing, attempting to enforce, threatening to enforce, or otherwise requiring compliance with the Orders or any other order to the extent any such order prohibits in-person services at the Church if the Church meets the

social distancing and hygiene guidelines pursuant to which the State allows so-called “Necessary Activities” to be conducted without numerical limit.

C. That the Court render a Declaratory Judgment declaring that the Orders both on their face and as applied by the State are unconstitutional under the United States Constitution and further declaring that the State has violated Plaintiffs’ rights to free exercise of religion, right to equal protection of the laws, and right to free speech.

D. That the Court declare Plaintiffs are prevailing parties and award Plaintiffs the reasonable costs and expenses of this action, including a reasonable attorney’s fee, in accordance with 42 U.S.C. § 1988.

E. That the Court grant such other and further relief as the Court deems equitable and just under the circumstances.

Respectfully submitted this 25<sup>th</sup> day of May 2020.

*/s/ Barry K. Arrington*

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Attorney for Plaintiffs

**VERIFICATION**

I, Mark Hotaling, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury that I have reviewed the foregoing Complaint, that I am competent to testify in this matter, that the facts contained therein are true and correct, and such allegations are based on information personally known and observed by me.

Executed on May 25, 2020.

  
\_\_\_\_\_  
Mark Hotaling



Exhibit K

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 20-cv-1480-RM-MEH

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.

---

**ANSWER TO VERIFIED FIRST AMENDED COMPLAINT**

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Defendants 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, by and through counsel, submit their Answer to the Verified First Amended Complaint [Doc. 34]:

**I. AUTHORITY FOR AMENDMENT**

1. Defendants admit, with respect to Paragraph 1, that they were served with the Complaint [Doc. 1] on May 27, 2020 and admit that the First Amended Complaint was filed within 21 days of May 27, 2020. The remaining allegations in Paragraph 1 contain argument, purport to summarize or recite law, or state legal contentions to which no response is required. To the extent a response is required, Defendants deny the allegations.

**II. *SOUTH BAY UNITED PENTECOSTAL CHURCH V. NEWSOM***

2. Defendants admit, with respect to Paragraph 2, that Plaintiffs filed the original

Complaint [Doc. 1] on May 25, 2020. The remaining allegations in Paragraph 2 contain argument, purport to summarize or recite law, or state legal contentions to which no response is required. To the extent a response is required, Defendants deny the allegations.

3. Defendants admit the allegations in Paragraph 3.

4. Defendants admit the allegations in Paragraph 4.

5. Defendants state, with respect to Paragraph 5, that Chief Justice Roberts' concurrence in *South Bay United Pentecostal Church v Newsom*, WL 2813056 (U.S. 2020), is a writing that speaks for itself, and they deny any allegation in Paragraph 5 inconsistent therewith.

6. The allegations in Paragraph 6 contain argument, purport to summarize or recite law, or state legal contentions to which no response is required. To the extent a response is required, Defendants deny the allegations.

7. Defendants admit, with respect to Paragraph 7, that in late May 2020, 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. Defendants admit that protests began in Denver and elsewhere in Colorado on the evening of May 28, 2020 and have continued thereafter. Defendants admit that at times, the protests have drawn thousands of people. Defendants admit that on occasion, some protests have lasted for several hours. Defendants admit that on occasion, some protestors marched and that on occasion, some protestors gathered in close proximity. Defendants admit that on occasion, some protestors did not adhere to social distancing. Defendants admit that some of these protests occurred outside the Colorado State Capitol Building, where Governor Polis's office is located. Defendants deny they permitted or encouraged these gatherings and deny all other allegations in Paragraph 7.

8. Defendants deny they permitted or encouraged the protest gatherings and deny that limitations on houses of worship are or were draconian. The remaining allegations in Paragraph 8 contain argument, purport to summarize or recite law, or state legal contentions to which no response is required. To the extent a response is required, Defendants deny the allegations.

9. The allegations in Paragraph 9 contain argument, purport to summarize or recite law, or state legal contentions to which no response is required. To the extent a response is required, Defendants deny the allegations.

### **III. INTRODUCTION**

10. Defendants lack information sufficient to form a belief as to the truth of the allegations in Paragraph 10 and therefore deny them.

11. Defendants admit, with respect to Paragraph 11, that penalties, including fines and jail time, may be assessed for violations of Colorado State public health orders. Defendants deny the remaining allegations in first two sentences of Paragraph 11. The allegations in the third sentence of Paragraph 11 contain argument, purport to summarize or recite law, or state legal contentions to which no response is required. To the extent a response is required, Defendants deny the allegations.

### **IV. PARTIES**

12. Defendants lack information sufficient to form a belief as to the truth of the allegations in the first two sentences of Paragraph 12 and therefore deny them. The remaining allegations in Paragraph 12 contain argument, purport to summarize or recite law, or state legal contentions to which no response is required. To the extent a response is required, Defendants deny the allegations.

13. Defendants lack information sufficient to form a belief as to the truth of the allegations in Paragraph 13 and therefore deny them.

14. Defendants admit, with respect to Paragraph 14, that Defendant Jared Polis is the Governor of Colorado and that the Verified First Amended Complaint names him as a defendant in his official capacity. The remaining allegations in Paragraph 14 contain argument, purport to summarize or recite law, or state legal contentions to which no response is required. To the extent a response is required, Defendants deny the allegations.

15. Defendants admit, with respect to Paragraph 15, that Jill Hunsaker Ryan (“Director Ryan”) is the Executive Director of the Colorado Department of Public Health and Environment (“CDPHE”) and that the Verified First Amended Complaint names Director Ryan as a defendant in her official capacity. The remaining allegations in Paragraph 15 contain argument, purport to summarize or recite law, or state legal contentions to which no response is required. To the extent a response is required, Defendants deny the allegations.

## **V. JURISDICTION AND VENUE**

16. The allegations in Paragraph 16 contain argument, purport to summarize or recite law, or state legal contentions to which no response is required. To the extent a response is required, Defendants deny the allegations.

17. Defendants admit the allegations in Paragraph 17.

18. Defendants admit the allegations in Paragraph 18.

19. Defendants admit this Court has jurisdiction to determine this dispute, including any claims for attorney’s fees and costs. Because Plaintiffs have not made a colorable claim for relief, Defendants deny that an award of attorney’s fees and costs to Plaintiffs is appropriate here.

20. Defendants admit, with respect to Paragraph 20, that a substantial part of the events giving rise to Plaintiffs' claims occurred in the State of Colorado and that the Governor and Director Ryan were residents of the Colorado at the time of these events. Defendants lack information sufficient to form a belief as to the truth of the allegations in Paragraph 20 that Plaintiffs were residents of the State of Colorado at the time of these events and therefore deny them. Defendants do not have any information that venue is inappropriate. The remaining allegations in Paragraph 20 contain argument, purport to summarize or recite law, or state legal contentions, no response is required. To the extent a response is required, Defendants deny the remaining allegations.

## **VI. FACTUAL BACKGROUND**

21. Defendants lack information sufficient to form a belief as to the truth of the allegations in Paragraph 21 and therefore deny them.

22. Defendants lack information sufficient to form a belief as to the truth of the allegations in Paragraph 22 and therefore deny them.

23. Defendants admit the allegations of Paragraph 23.

24. Defendants state, with respect to Paragraph 24, that Executive Order, D 2020 091, "Safer at Home and in the Vast, Great Outdoors," is a writing that speaks for itself and deny any allegation in Paragraph 24 inconsistent therewith.

25. Defendants admit the allegations of Paragraph 23.

26. Defendants state, with respect to Paragraph 26, that the Sixth Amended Public Health Order 20-28 Safer at Home and in the Vast, Great Outdoors ("Sixth Amended PHO") is a writing that speaks for itself and deny any allegation in Paragraph 26 inconsistent therewith.

27. Defendants state, with respect to Paragraph 27, that the Sixth Amended PHO is a

writing that speaks for itself and deny any allegation in Paragraph 27 inconsistent therewith.

28. Defendants state, with respect to Paragraph 28, that the Sixth Amended PHO is a writing that speaks for itself, and deny any allegation in Paragraph 28 inconsistent therewith.

29. Defendants state, with respect to Paragraph 29, that the Sixth Amended PHO is a writing that speaks for itself and deny any allegation in Paragraph 29 inconsistent therewith.

30. Defendants admit the allegations of Paragraph 30.

31. The allegations in Paragraph 31 purports to define a term for purposes of Plaintiffs' pleading, and no response is required. To the extent a response is required, Defendants deny the allegations.

32. Defendants admit, with respect to Paragraph 32, that in late May 2020, 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. Defendants admit that protests began in Denver and elsewhere in Colorado on the evening of May 28, 2020 and continued thereafter for some period of time. Defendants admit that at times, the protests have drawn thousands of people. Defendants admit that on occasion, some of these protests occurred outside the Colorado State Capitol Building. Defendants deny all other allegations in Paragraph 32.

33. Defendants admit, with respect to Paragraph 33, that on occasion, some protestors gathered in close proximity and that on occasion, some protestors shouted in unison. Defendants deny, with respect to Paragraph 33, that all protestors gathered in close proximity on all occasions and deny that all protestors shouted in unison on all occasions. Defendants deny the remaining allegations in Paragraph 33.

34. Defendants admit, with respect to Paragraph 34, that on occasion, some protestors

did not adhere to social distancing. Defendants deny, with respect to Paragraph 34, that all protestors ignored social distancing on all occasions, and Defendants deny the remaining allegations in Paragraph 34.

35. Defendants deny the allegations of Paragraph 35.

36. Defendants deny the allegations of Paragraph 36.

37. Defendants deny the allegations of Paragraph 37.

38. Defendants deny the allegations of Paragraph 38.

39. Defendants are without information sufficient to form a belief as to the truth of the allegations in Paragraph 39 and therefore deny them.

40. Defendants are without information sufficient to form a belief as to the truth of the allegations in Paragraph 40 and therefore deny them.

41. Defendants are without information sufficient to form a belief as to the truth of the allegations in Paragraph 41 and therefore deny them.

42. Defendants are without information sufficient to form a belief as to the truth of the allegations in Paragraph 42 and therefore deny them.

43. Defendants are without information sufficient to form a belief as to the truth of the allegations in Paragraph 43 and therefore deny them.

44. Defendants are without information sufficient to form a belief as to the truth of the allegations in Paragraph 44 and therefore deny them.

45. Defendants are without information sufficient to form a belief as to the truth of the allegations in Paragraph 45 and therefore deny them.

46. Defendants are without information sufficient to form a belief as to the truth of the allegations in Paragraph 46 and therefore deny them.

47. Defendants admit, with respect to Paragraph 47, that the Governor’s Executive Orders and CDPHE’s Public Health Orders are enforceable, admit that the Defendants have stated an intention to enforce Governor’s Executive Orders and CDPHE’s Public Health Orders, and admit that from March 2020 through the present, CDPHE has enforced its COVID-19 related Public Health Orders against some third parties. Defendants deny the remaining allegations in Paragraph 47.

**VII. FIRST CLAIM FOR RELIEF**  
**42 U.S.C. § 1983 – Violation of First Amendment Freedom of Religion**

48. Defendants incorporate by reference their answers to all other paragraphs of the First Amended Complaint.

49. The allegations in Paragraph 49 contain argument, purport to summarize or recite law, or state legal contentions to which no response is required. To the extent a response is required, Defendants deny the allegations.

50. Defendants are without information sufficient to form a belief as to the truth of the allegations in Paragraph 50 and therefore deny them.

51. Defendants are without information sufficient to form a belief as to the truth of the allegations in Paragraph 51 and therefore deny them.

52. The allegations in Paragraph 52 contain argument, purport to summarize or recite law, or state legal contentions to which no response is required. To the extent a response is required, Defendants deny the allegations.

53. The allegations in Paragraph 53 contain argument, purport to summarize or recite law, or state legal contentions to which no response is required. To the extent a response is required, Defendants deny the allegations.

54. The allegations in Paragraph 54 contain argument, purport to summarize or recite



law, or state legal contentions to which no response is required. To the extent a response is required, Defendants deny the allegations.

55. The allegations in Paragraph 55 contain argument, purport to summarize or recite law, or state legal contentions to which no response is required. To the extent a response is required, Defendants deny the allegations.

56. The allegations in Paragraph 56 contain argument, purport to summarize or recite law, or state legal contentions to which no response is required. To the extent a response is required, Defendants deny the allegations.

57. The allegations in Paragraph 57 contain argument, purport to summarize or recite law, or state legal contentions to which no response is required. To the extent a response is required, Defendants deny the allegations.

58. The allegations in Paragraph 58 contain argument, purport to summarize or recite law, or state legal contentions to which no response is required. To the extent a response is required, Defendants deny the allegations.

59. The allegations in Paragraph 59 contain argument, purport to summarize or recite law, or state legal contentions to which no response is required. To the extent a response is required, Defendants deny the allegations.

60. The allegations in Paragraph 60 contain argument, purport to summarize or recite law, or state legal contentions to which no response is required. To the extent a response is required, Defendants deny the allegations.

61. The allegations in Paragraph 61 contain argument, purport to summarize or recite law, or state legal contentions to which no response is required. To the extent a response is required, Defendants deny the allegations.

**VIII. SECOND CLAIM FOR RELIEF**  
**42 U.S.C. § 1983 – Violation of First Amendment Free Speech Rights**

62. Defendants incorporate by reference their answers to all other paragraphs of the First Amended Complaint.

63. The allegations in Paragraph 63 contain argument, purport to summarize or recite law, or state legal contentions to which no response is required. To the extent a response is required, Defendants deny the allegations.

64. The allegations in Paragraph 64 contain argument, purport to summarize or recite law, or state legal contentions to which no response is required. To the extent a response is required, Defendants deny the allegations.

65. The allegations in Paragraph 65 contain argument, purport to summarize or recite law, or state legal contentions to which no response is required. To the extent a response is required, Defendants deny the allegations.

66. The allegations in Paragraph 66 contain argument, purport to summarize or recite law, or state legal contentions to which no response is required. To the extent a response is required, Defendants deny the allegations.

67. The allegations in Paragraph 67 contain argument, purport to summarize or recite law, or state legal contentions to which no response is required. To the extent a response is required, Defendants deny the allegations.

68. The allegations in Paragraph 68 contain argument, purport to summarize or recite law, or state legal contentions to which no response is required. To the extent a response is required, Defendants deny the allegations.

69. The allegations in Paragraph 69 contain argument, purport to summarize or recite law, or state legal contentions to which no response is required. To the extent a response is

required, Defendants deny the allegations.

70. The allegations in Paragraph 70 contain argument, purport to summarize or recite law, or state legal contentions to which no response is required. To the extent a response is required, Defendants deny the allegations.

**IX. THIRD CLAIM FOR RELIEF**  
**42 U.S.C. § 1983 – Violation of First Amendment Freedom of Association/Assembly**

71. Defendants incorporates by reference their answers to all other paragraphs of the First Amended Complaint.

72. The allegations in Paragraph 72 contain argument, purport to summarize or recite law, or state legal contentions to which no response is required. To the extent a response is required, Defendants deny the allegations.

73. The allegations in Paragraph 73 contain argument, purport to summarize or recite law, or state legal contentions to which no response is required. To the extent a response is required, Defendants deny the allegations.

74. The allegations in Paragraph 74 contain argument, purport to summarize or recite law, or state legal contentions to which no response is required. To the extent a response is required, Defendants deny the allegations.

75. The allegations in Paragraph 75 contain argument, purport to summarize or recite law, or state legal contentions to which no response is required. To the extent a response is required, Defendants deny the allegations.

76. The allegations in Paragraph 76 contain argument, purport to summarize or recite law, or state legal contentions to which no response is required. To the extent a response is required, Defendants deny the allegations.

77. The allegations in Paragraph 77 contain argument, purport to summarize or recite

law, or state legal contentions to which no response is required. To the extent a response is required, Defendants deny the allegations.

**X. FOURTH CLAIM FOR RELIEF**  
**42 U.S.C. § 1983 – Violation of Right to Equal Protection Under the Fourteenth Amendment**

78. Defendants incorporate by reference their answers to all other paragraphs of the First Amended Complaint.

79. The allegations in Paragraph 79 contain argument, purport to summarize or recite law, or state legal contentions to which no response is required. To the extent a response is required, Defendants deny the allegations.

80. The allegations in Paragraph 80 contain argument, purport to summarize or recite law, or state legal contentions to which no response is required. To the extent a response is required, Defendants deny the allegations.

81. The allegations in Paragraph 81 contain argument, purport to summarize or recite law, or state legal contentions to which no response is required. To the extent a response is required, Defendants deny the allegations.

82. The allegations in Paragraph 82 contain argument, purport to summarize or recite law, or state legal contentions to which no response is required. To the extent a response is required, Defendants deny the allegations.

83. The allegations in Paragraph 83 contain argument, purport to summarize or recite law, or state legal contentions to which no response is required. To the extent a response is required, Defendants deny the allegations.

84. The allegations in Paragraph 84 contain argument, purport to summarize or recite law, or state legal contentions to which no response is required. To the extent a response is

required, Defendants deny the allegations.

85. The allegations in Paragraph 85 contain argument, purport to summarize or recite law, or state legal contentions to which no response is required. To the extent a response is required, Defendants deny the allegations.

86. The allegations in Paragraph 86 contain argument, purport to summarize or recite law, or state legal contentions to which no response is required. To the extent a response is required, Defendants deny the allegations.

87. The allegations in Paragraph 87 contain argument, purport to summarize or recite law, or state legal contentions to which no response is required. To the extent a response is required, Defendants deny the allegations.

88. The allegations in Paragraph 88 contain argument, purport to summarize or recite law, or state legal contentions to which no response is required. To the extent a response is required, Defendants deny the allegations.

#### **XI. PRAYER FOR RELIEF**

89. Plaintiffs' paragraph titled "Prayer for Relief" requires no response. To the extent a response is required, Defendants deny that Plaintiffs are entitled to the relief requested.

#### **GENERAL DENIAL**

90. Defendants deny Plaintiffs are entitled to the relief requested.

91. Any allegation not specifically admitted in this Answer is hereby denied by Defendants.

#### **AFFIRMATIVE DEFENSES**

A. Plaintiffs' claims fail to state a claim upon which relief can be granted.

B. Plaintiffs' claims are moot.

C. Defendants affirmatively assert that Plaintiffs' federal and state rights were not violated and that Plaintiffs have been afforded all the rights, privileges, and immunities granted by the United States Constitution and Colorado law.

D. Plaintiffs are not entitled to its costs, interest, or attorneys' fees under 42 U.S.C. § 1988 or any other provision of law.

E. Defendants reserve the right to assert additional defenses which may become known during the course of this case.

Respectfully submitted this 15th day of July, 2020.

PHILIP J. WEISER  
Attorney General

s/ Emily Buckley

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***Eric R. Olson\****

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\*Counsel of Record

**CERTIFICATE OF SERVICE**

I certify that I served the foregoing ANSWER TO VERIFIED FIRST AMENDED COMPLAINT upon all parties herein by e-filing with the CM/ECF system maintained by the Court, this 15th day of July, 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***





**COLORADO**  
Governor Jared Polis



About



Key Issues



Press Release

EXHIBIT L

# Governor Polis Statement on Demonstrations in Denver

SATURDAY, MAY 30, 2020

DENVER - Governor Jared Polis released the following statement:

“Friday’s demonstrations against the senseless killing of George Floyd and far too many innocent black Americans before him began as a peaceful day time protest and unfortunately shifted into disorder late into the evening. It appears the disruptors that caused damage throughout the city were not necessarily the same peaceful protesters from the day time. Unfortunately, because of a few individuals who were more focused on causing unrest and damage rather than advocating for justice, people awoke to images of smashed out windows, graffiti, and the smell of tear gas. We are all filled with grief about the unjust murder of George Floyd and I stand ready to join hands with those hurting today as we peacefully work for justice. Today is a new day and it is my hope and the hope of all Coloradans that any future demonstrations remain peaceful. To those peacefully protesting at a safe social distance, know that I see you and I am listening. Mayor Hancock has requested the support of the National Guard to help keep people safe and prevent further destruction and I have granted that request.”

The Governor authorized the Colorado National Guard to support the city and county of Denver with public safety activities through the weekend. This is a different mission and different guardsmen and women than National Guard’s COVID-19 mission support, and the work of other Guard units on the COVID-19 response continues uninterrupted.





**COLORADO**

**Governor Jared Polis**



About



Key Issues



Press Releases



# Governor Polis and Mayor Hancock Joint Statement on President's Threat to Use Military Force Against Demonstrators

MONDAY, JUNE 1, 2020

DENVER – Governor Jared Polis and Mayor Michael B. Hancock issued the following joint statement regarding the President's threat today to use military force against demonstrators:

“Denver police, our mutual aid partners and a small contingent of Colorado National Guard have been working for the past four days and nights to support peaceful demonstrations in Denver. They have worked long hours under difficult conditions, especially as day turns to night. But there is no need for the deployment of US troops to maintain order in our city. The President's threat to deploy federal troops is counterproductive and will only stoke the potential for worse violence and destruction. Denver is not Little Rock in 1957, and Donald Trump is not President Eisenhower. This is a time for healing, for bringing people together, and the best way to protect civil rights is to move away from escalating violence.”



[Home](#) □ [Guidance for people attending protests](#)

# Guidance for people attending protests

<a href="#">Home</a>
<a href="#">About COVID-19</a>
<a href="#">People at higher risk for severe illness</a> □
<a href="#">COVID-19 &amp; well-child checkups</a>
<a href="#">Do you have symptoms?</a> □
<a href="#">Prevent the spread of</a>

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 <input type="checkbox"/>
Cleaning guidance
Mask guidance
<b>Protest guidance</b>
Symptom screening
Isolation & quarantine <input type="checkbox"/>
Safer at Home <input type="checkbox"/>
Public health & executive orders <input type="checkbox"/>
Health Equity Response Team <input type="checkbox"/>
Reducing fear and stress <input type="checkbox"/>
Guidance documents & resources
LPHAs and health care providers <input type="checkbox"/>
General Questions and Answers
Communication resources <input type="checkbox"/>

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 <input type="checkbox"/>
Data <input type="checkbox"/>
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

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[Español](#) (Spanish) | [Tiếng Việt](#) (Vietnamese) |

[Soomaali](#) (Somali) | [中文](#) (Simplified Chinese) |

(Arabic) [العربية](#) | \_\_\_\_\_ (Nepali)



EXHIBIT N

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.

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DECLARATION OF RACHEL HERLIHY, M.D.

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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 Coloradans 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.

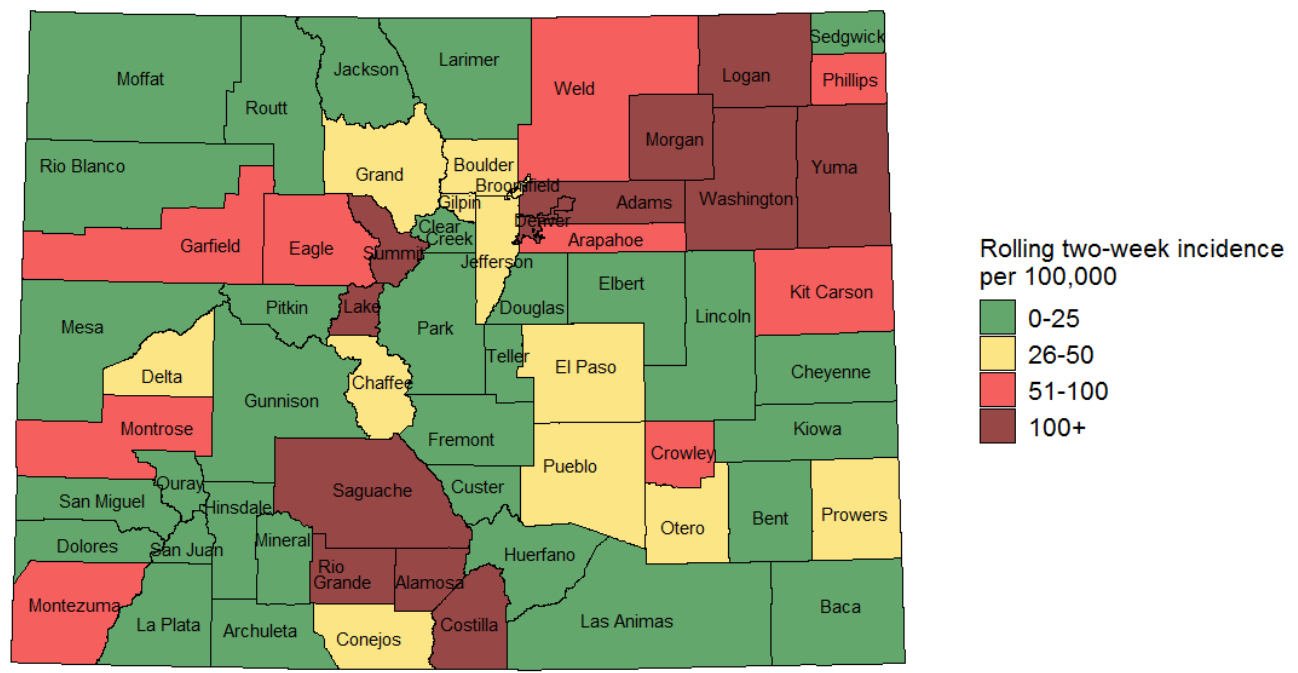
20. Modeling by the University of Colorado estimates that social contacts decreased by 52% after the first phase of social distancing orders, implemented March 13–23, 2020. During the Stay at Home phase, decreases in social distancing of 80% were achieved.

**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

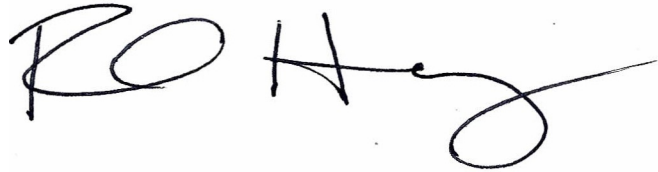
to prevent the pandemic from accelerating again, prevent exceeding hospital capacity and running out of ventilators, get kids back to school in the fall, and avoid having to return to a Stay at Home model.

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.

A handwritten signature in black ink, appearing to read "R. Herlihy". The signature is written in a cursive style with a large initial "R" and a long, sweeping tail.

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Rachel Herlihy, M.D.