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MONTANA ELEVENTH JUDICIAL DISTRICT COURT
FLATHEAD COUNTY

STATE OF MONTANA,
DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES,

Plaintiff,

v.

GRIGGS FERNDALÉ, LLC, d/b/a
FERNDALÉ MARKET;

Defendant.

Case No. _____

**VERIFIED COMPLAINT AND
APPLICATION FOR
TEMPORARY RESTRAINING
ORDER, INJUNCTIVE RELIEF,
ENFORCEMENT OF PUBLIC
HEALTH LAWS, AND FOR
ORDER TO SHOW CAUSE**

INTRODUCTION

1. Montana is in the midst of a once-in-a-century global pandemic. COVID-19 is a highly contagious and potentially fatal respiratory disease caused by the novel SARS-CoV-2 virus. The emergence of SARS-CoV-2 virus has given rise to a public health crisis. To date, over 8 million Americans have been diagnosed with COVID-19 and nearly 220,000 have died, including more than 275 Montanans. Across the globe, the pandemic has disrupted lives, halted commerce, and complicated basic governance.
2. Since the pandemic's outset, the State of Montana and the Department of Public Health and Human Services (Department) have acted decisively to stem the spread of COVID-19, adopting measures based on the available science, guidance from the Centers for Disease Control and Prevention (CDC), and input from medical professionals and public health officials. Pursuant to a declared state of emergency, the Governor and local public health officials have issued numerous directives designed to curb transmission of the virus, keep Montana's economy moving, and protect both the health and livelihoods of Montanans. The Department has worked closely with local officials around the State on infection control, testing, and coordinating resources to fight the epidemic.

3. Numerous authorities have recognized the efficacy of physical distancing and universal face covering measures to limit the transmission and severity of COVID-19. Accordingly, on July 15, 2020, the Governor directed that all businesses and organizers of outdoor activities ensure that all persons age 5 or older wear a face covering. The Mask Directive, a public health order pursuant to Mont. Code Ann. § 50-1-103(2), emphasized personal responsibility, education, and voluntary compliance as the preferred course of action, but also permitted enforcement by local officials, or if necessary, by the Department.
4. Thanks to Montanans' efforts at social distancing and personal responsibility, Montana kept COVID-19 in check for far longer than other states and had low infection rates well into the summer. Unfortunately, cases have since climbed rapidly. Montana now has among the highest growth rates in the nation, and Montana's hospitals are reporting that they will soon be overwhelmed with COVID-19 patients.
5. Stopping the spread of COVID-19 is crucial to keeping Montanans healthy and safe, protecting our hospitals and first responders, and getting our economy moving again. In some situations, however, local jurisdictions are not taking the virus seriously, and have refused to adopt public health measures or to enforce the Governor's Directives and state public health laws,

and have even sometimes encouraged noncompliance. Therefore, the State's health, safety, and welfare requires that the Department bring this action to enforce the State's public health laws where local officials are unwilling to do so.

6. Accordingly, the Department brings this enforcement action to seek injunctive relief to ensure the State's efforts at curtailing the pandemic are not frustrated by persistent noncompliance with state law.

IDENTITY OF PARTIES

7. Plaintiff Department of Public Health and Human Services is an executive branch agency of the State of Montana.
8. The Department's duties include taking various actions to "carry out the purposes of the public health system to protect and promote the public health." Mont. Code Ann. § 50-1-202(1).
9. The Department is empowered to "make inspections for conditions of public health importance," including infectious diseases, and "issue written orders for correction, destruction, or removal of the condition." Mont. Code Ann. §50-1-202(1)(a). It also has a duty to "bring and pursue actions necessary to abate, restrain, or prosecute the violation of public health laws and rules." Mont. Code Ann. § 50-1-202(1)(g). The Department may "sue in district court to enjoin any violation of the public health laws, rules, or orders adopted or

issued under the public health laws administered by the department.” Mont. Code Ann. § 50-1-103(2).

10. Defendant Griggs Ferndale, LLC, doing business as Ferndale Market, is a convenience store and marketplace located in Flathead County, Montana.

JURISDICTION AND VENUE

11. The Department seeks injunctive relief pursuant to Title 27, Chapter 19 of the Montana Code Annotated and enforcement of public health laws pursuant to Title 50, Chapter 1 of the Montana Code Annotated.
12. Jurisdiction is proper in this Court pursuant to Mont. Code Ann. § 3-5-302; Article II, Section 3 of the Montana Constitution; and this Court’s inherent power to review state agency decisions and actions and to issue appropriate relief.
13. Venue is proper in Flathead County pursuant to Mont. Code Ann. § 25-2-118.

FACTUAL ALLEGATIONS

14. COVID-19 spreads primarily through close contact with infected individuals. It is highly contagious and can be spread even through contact with asymptomatic individuals. Its long incubation period—lasting up to 14 days—makes limiting its transmission additionally challenging.
15. COVID-19 has a very unpredictable course, and anyone can suffer severe symptoms, including those leading to hospitalization or death. Individuals

over 65 or those who have any of several relatively common pre-existing medical conditions face a particularly high risk of hospitalization or death.

16. The federal government has largely left states to their own devices in combatting COVID-19; thus, it has fallen on governors throughout the nation to adopt a variety of statewide measures to protect the nation's health. Accordingly, on March 12, 2020, the Governor declared a state of emergency that remains in place today. (Executive Order 2-2020, Ex. A; Executive Order 3-2020, Ex. B.)
17. In the ensuing months, the Governor worked to ensure Montanans' health and safety by issuing a number of executive directives pursuant to his emergency powers, *see* Mont. Code Ann. §§ 10-3-104, 10-3-302, and 10-3-305, that implemented measures to combat the spread of COVID-19. Many of these directives have been jointly issued through the Department as "public health . . . orders" within the meaning of Mont. Code Ann. § 50-1-103(2), making them enforceable by local authorities, the Attorney General, or the Department.
18. Among the issued executive directives was a March 26, 2020, "Directive Implementing Executive Orders 2-2020 and 3-2020 providing measures to stay at home and designating certain essential functions" ("Stay-at-Home Directive," Ex. C) which effected a statewide "shut down" in order to flatten

the growth curve of COVID-19 throughout the state and allow time for medical providers and other essential services to prepare for the arriving pandemic. Montanans largely complied with this directive and as of June the state had the “the lowest coronavirus infection rate in the nation, and [was] among the lowest hospitalizations and deaths.” National Public Radio, *Steve Bullock’s COVID-19 Response May Boost His Senate Run In Montana*, <https://www.npr.org/2020/06/25/882311863/on-the-covid-19-campaign-trail-montanas-gov-steve-bullock-may-be-getting-a-boost> (last accessed 10/19/20). The Stay-at-Home Directive is expressly designated as a public health order under Mont. Code Ann. § 50-1-103.

19. Due to the successful result of the stay at home directive, on April 22, 2020, the Governor issued a “Directive implementing Executive Orders 2-2020 and 3-2020 and providing guidance for the phased reopening of Montana and establishing conditions for Phase One” that implemented a phased reopening plan for the state (*see also*, “Reopening the Big Sky: Phase Approach,” Ex. D). The continued successful response within the state allowed Montana to pass through the substantially restrictive Phase 1 and enter the current Phase 2 of the plan.
20. The “Directive implementing Executive Orders 2-2020 and 3-2020 and establishing conditions for Phase Two” (“Phase 2 Directive,” Ex. E) allows

most business and social activities to continue but places requirements on those activities such as social distancing, 75-percent capacity caps in certain businesses, and strongly recommends cancelling any event with over 50 attendees. Like its forebears, the Phase 2 Directive is expressly designated a public health order under Mont. Code Ann. § 50-1-103.

21. The Phase 2 Directive is complemented by the July 15, 2020, “Directive implementing Executive Orders 2-2020 and 3-2020 and providing for the mandatory use of face coverings in certain settings” (“Mask Directive,” Ex. F). Save for narrow exceptions, the Mask Directive requires face coverings in indoor spaces open to the public and in certain outdoor activities where social distancing is not practicable. Subject to the narrow exceptions set forth in the Mask Directive, businesses open to the public must require and take reasonable measures to ensure that all employees, contractors, volunteers, customers, or other members of the public wear a face covering that covers their mouth and nose at all times while entering or remaining in any indoor spaces open to the public. The Mask Directive further requires that all points of entry open to the public shall have a clearly visible sign posted stating: “Mask or face covering use required for ages five and older.” The Mask Directive is expressly a public health order enforceable through Mont. Code Ann. § 50-1-103.

22. Perhaps due to fatigue resulting from the long duration of the COVID-19 pandemic, various communities throughout Montana have seen mixed compliance with the Phase 2, and Mask Directive. While some initial virus hotspots like Gallatin County presently have relatively low per-capita case numbers, other places, including Flathead, Roosevelt, Rosebud, and Big Horn counties, are seeing case growth disproportionate to the local population.
23. These hotspots pose a public health risk to the entire state. The resulting hospitalizations strain capacity both locally and in hospitals to which patients are transferred for higher level of care. They strain testing and contact tracing capabilities. Moreover, as people infected in hotspots travel within the state, they risk spurring outbreaks elsewhere. Since September 1, 2020, total cases in Montana have more than tripled from roughly 7,500 cases to over 25,640 today. Active hospitalizations have climbed from approximately 140 to over 350, straining the capacities of hospitals throughout Montana. Deaths have more than doubled from 105 on September 1 to over 275 today.
24. On October 7, 2020, the Governor held a press conference to urge local jurisdictions to establish and enforce safety measures to prevent the spread of COVID-19. *See e.g., Great Falls Tribune, 'It can't all be solved from Helena:' Bullock urges local jurisdictions to enforce safety precautions,* <https://www.greatfallstribune.com/story/news/2020/10/07/montana->

coronavirus-governor-steve-bullock-local-enforcement-covid-19-precautions/5915330002/ (last accessed 10/19/20). During the press conference, it was reported that 31 percent of the new COVID-19 cases confirmed in that past week were from Yellowstone and Flathead counties.

Id. County commissioners and members of the Flathead County Board of Health, however, have responded by publicly offering support to residents who ignore the Governor’s directives. (See Flathead Beacon, *Health Board Takes No Action on COVID-19 at Monthly Meeting*,

<https://flatheadbeacon.com/2020/10/15/health-board-takes-no-action-covid-19-monthly-meeting/> (last accessed 10/19/20); internally linked letter from board, Ex. G.)

25. On October 13, 2020, the Flathead City-County Health Department issued a press release stating that “case investigation staff ... are working diligently 7 days a week to complete case investigations and notify close contacts, but due to high case numbers FCCHD is currently unable to complete case investigations of positive COVID-19 cases within 24 hours.” (Flathead City-County Health Department, *Press release* (Oct. 13, 2020), Ex. H.)
26. On October 15, 2020, the Flathead City-County Board of Health opted for inaction in response to the county’s exploding COVID-19 case count, rejecting a proposal to limit attendance at gatherings to 500 people and

declining even to hear the health department's proposed Control Measure Plan. *Id.*

27. Flathead County currently has 801 active cases and has seen 23 deaths. The county has had 2,823 total cases. As of October 21, 2020, 131 of Kalispell Regional Medical Center's ("KRMC") 267 total beds are occupied, and 20 of KRMC's 48 intensive care unit beds are occupied. DPHHS, *COVID-19 Hospital Occupancy and Capacity in Montana*, <https://dphhs.mt.gov/publichealth/cdepi/diseases/coronavirusmt/demographics> (Status Report as of 10/21/2020). Because the Flathead City-County Board of Health has failed to take action to protect the citizens within its jurisdiction, it now falls upon the Department to take measures to prevent further infection, hospitalization, and death in the county.
28. Pursuant to Mont. Code Ann. § 50-1-202, the Department shall "identify, assess, prevent, and mitigate conditions of public health importance" through inspections, *see also*, Mont. Code Ann. § 50-1-203, and "other public health measures as allowed by law."
29. Five citizen complaints of Defendant's violations of the Governor's Directives or public health orders were made to the Flathead City-County Health Department this summer, leading to referral to the Flathead County Attorney

requesting assistance with public health enforcement. No enforcement measures, however, were taken.

30. On October 20 and 21, 2020, Department inspectors conducted two separate on-site inspections of Ferndale Market to monitor compliance with the Governor's Phase 2 and Mask Directives.
31. During the October 20, 2020, on-site inspection, Department inspectors personally observed Ferndale Market to be in violation of the Mask Directive. Ferndale Market's face covering signage stating in part, "we assume if you are not wearing a mask, you have a condition that precludes it," does not comply with the Mask Directive. (*See* Declarations of Staci Evangeline and Heather Welch (Oct. 22, 2020); Ex. I.) Additionally, numerous customers and employees of Ferndale Market were not wearing masks. The Department inspectors observed a total of three store employees not wearing masks in areas of the store open to the public. Moreover, none of the patrons observed in the store were wearing masks. (*See* Declarations of Staci Evangeline and Heather Welch; *see also* photographs of signage, Ex. J.)
32. During the October 21, 2020, on-site visit Department inspectors observed two visibly present employees. Neither of these employees were wearing masks in areas of the store open to the public. Of the seven observed patrons present in the store, none were wearing masks. (*See* Declarations of Staci

Evangeline and Heather Welch; *see also photographs of maskless customers and employees Ex. K.*)

33. During each of the on-site visits of Ferndale Market, the Department did not observe a single customer wearing a mask. (Evangeline Decl.; Welch Decl.) During the October 21, 2020, on-site visit the Department did not observe a single employee wearing a mask. *Id.*
34. Defendant’s history of prior complaints, improper signage, and two consecutive days of substantial nonuse of masks by employees and customers alike demonstrates Ferndale Market’s intention to continue operating in violation of the Mask Directive, which states in pertinent part: “all businesses, government offices, or other persons responsible for indoor spaces open to the public shall require and take reasonable measures to ensure that all employees, contractors, volunteers, customers, or other members of the public wear a face covering that covers their mouth and nose at all times while entering or remaining in any indoor spaces open to the public.” (Ex. F at 3.)

FIRST CAUSE OF ACTION
(Violation of a Public Health Order)

35. The Department realleges all the allegations set forth in the prior paragraphs of this complaint.
36. Mont. Code Ann. § 50-1-103(2), states “the department may, through the attorney general or appropriate county attorney, sue in district court to enjoin

any violation of the public health laws, rules, or orders adopted or issued under the public health laws administered by the department.”

37. Mont. Code Ann. § 50-1-202 provides that in order “to protect and promote the public health, the department, in collaboration with federal, state, and local partners, shall “bring and pursue actions necessary to abate, restrain, or prosecute the violation of public health laws and rules[.]”
38. Defendant’s complete disregard for the provisions of the Mask Directive requiring all businesses to require and take reasonable measures to ensure that employees and members of the public wear a face covering that covers their mouth and nose at all times while entering or remaining in any indoor spaces open to the public jeopardizes the health and wellbeing of employees and patrons alike—as well as that of individuals who subsequently come into contact with those employees and patrons.
39. Defendant’s failure to maintain required signage and permitting customers and employees to enter and remain in Ferndale Market without masks violates the Mask Directive, a violation of a public health order and the public health laws of the State of Montana.
40. Defendant’s violation of the emergency directives and continued course of action outside of the conduct prescribed by the Department’s public health

orders entitles the Department to an order from this Court directing Defendant to come into compliance with these public health authorities.

SECOND CAUSE OF ACTION
(Abatement of a Public Health Nuisance)

41. The Department realleges all the allegations set forth in the prior paragraphs of this complaint.
42. Mont. Code Ann. § 50-1-202(1)(d)(v), authorizes the Department to seek abatement of public health nuisances.
43. A nuisance is anything that is “injurious to health. . . so as to interfere with the comfortable enjoyment of life.” Mont. Code Ann. § 27-30-101(1). A public nuisance is “one which affects, at the same time, an entire community or neighborhood or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.” Mont. Code Ann. § 27-30-102.
44. Defendant’s failure to comply with the Mask Directive is injurious to the public health, and affects the public health of the entire community and a considerable number of persons.
45. The Department is entitled to an order abating the public nuisance caused by Defendant’s unlawful conduct.

THIRD CAUSE OF ACTION
(preliminary injunctive relief and temporary restraining order)

46. The Department realleges all the allegations set forth in the prior paragraphs of this complaint.
47. Defendant's flagrant disregard for the Mask Directive jeopardizes the health of every employee and patron of Defendant's business and any person who subsequently comes into contact with those individuals. Defendant's conduct is contributing to the increased spread of a dangerous infectious disease and causing irreparable harm to the Department, the State of Montana, and the general public health, safety, and welfare.
48. An injunction preventing Defendant's continued violation of the Governor's Directives and public health orders will mitigate the spread of COVID-19 and is in the public interest.
49. The Department is likely to succeed on the merits of its claims.
50. Pursuant to Mont. Code Ann. § 27-19-201(1), the Department is entitled to a temporary injunction and restraining order to prevent Defendant from continuing to operate in violation of emergency directions of the Department's public health orders until the Court is satisfied that Defendant's operation does not jeopardize the health of individuals who patronize the business, and in turn, anyone who subsequently comes into contact with those individuals. A temporary restraining order is the only way to attempt a maintenance of the status quo pending a final outcome of this litigation.

51. Additionally, Mont. Code Ann. § 50-1-203(2) provides that “[e]ither the department or a local board of health may bring an action, including an action for injunctive relief, to correct the public health deficiencies.”
52. Plaintiff believes, based upon the above allegations, that waiting for Defendant’s response in opposition greatly jeopardizes the public health and is most likely to result in immediate and irreparable injury.
53. The Department is in the process of having a courtesy copy of this verified complaint served on Defendant to ensure compliance with Mont. Code Ann. § 27-19-315(2).

FOURTH CAUSE OF ACTION
(final injunctive relief)

54. The Department realleges all the allegations set forth in the prior paragraphs of this complaint.
55. Defendant’s unlawful conduct jeopardizes the health of every staff member and patron of Defendant’s business and any person who subsequently comes into contact with those individuals. Defendant’s conduct is contributing to the increased spread of a dangerous infectious disease and causing irreparable harm to the Department, the State of Montana, and the general public health, safety, and welfare.
56. Pursuant to Mont. Code Ann. § 27-19-102(1), the Department is entitled to final injunctive relief restraining Defendant from continuing to operate in

violation of emergency directives and the Department's public health orders because pecuniary compensation will not afford adequate relief when one considers the long term chronic impairments and even death that can result from COVID-19.

57. Moreover, given the severe health consequences of COVID-19, it would be extremely difficult to ascertain the amount of compensation that would afford adequate relief to someone who is infected due to Defendant's operation in violation of emergency directives and the Department's public health orders. Additionally, Mont. Code Ann. § 50-1-203(2) provides that "[e]ither the department or a local board of health may bring an action, including an action for injunctive relief, to correct the public health deficiencies."

PRAYER FOR RELIEF

WHEREFORE, the Department respectfully requests the following relief:

1. Injunctive relief, including an immediate temporary restraining order enjoining Defendant from operating in a manner contrary to the emergency directives and Department's public health orders. Specifically, but not limited to, the Department requests a temporary restraining order enjoining Defendant from operating in violation of the Mask Directive.
2. An order directing the Flathead County Sheriff's Office to enforce the terms and conditions of the preliminary injunction and temporary restraining order.

3. An order requiring Defendant to appear and show cause as to why injunctive relief should not be granted.
4. That after a hearing on the matter, the Court issue an order granting final injunctive relief enjoining Defendant from operating in a manner contrary to the Mask Directive and each of the other Governor's Directives or the Department public health orders for the pendency of the emergency declaration or until the specific emergency directives and public health orders alleged to have been violated above have been rescinded. Should the Department reach settlement with Defendant prior to any show cause hearing, the Department will promptly move to vacate any hearing set and the parties will submit a stipulated consent decree and settlement.
5. In the alternative, an order from this Court requiring Defendant to abate operation in a manner that constitutes a public nuisance and is injurious to public health.
6. An order for any such other relief as the Court deems just and proper.

DATED this 22 day of October, 2020.



Nicholas Domitrovich



Robert Lishman
Special Assistant Attorneys General
DPHHS Office of Legal Affairs

VERIFICATION

I declare under penalty of perjury and under the laws of the State of Montana that I, as an authorized representative of the Montana Department of Public Health and Human Services, have read the foregoing VERIFIED COMPLAINT AND APPLICATION FOR TEMPORARY RESTRAINING ORDER, INJUNCTIVE RELIEF, ENFORCEMENT OF PUBLIC HEALTH LAWS, AND FOR ORDER TO SHOW CAUSE, know the contents thereof, and hereby state that the foregoing is true and correct.

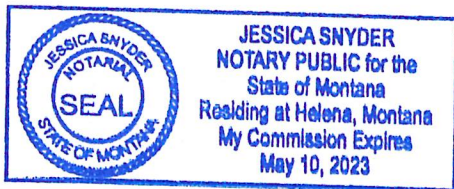
DATED this 22 day of October 2020, at Helena, Montana.

Laura Smith

Laura Smith, Deputy Director
Department of Public Health & Human Services

State of Montana
Lewis & Clark County

SIGNED AND SWORN TO before me on this 22nd day of October 2020,
by LAURA SMITH.



Jessica Snyder

NOTARY PUBLIC

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing **VERIFIED COMPLAINT AND APPLICATION FOR TEMPORARY RESTRAINING ORDER, INJUNCTIVE RELIEF, ENFORCEMENT OF PUBLIC HEALTH LAWS, AND FOR ORDER TO SHOW CAUSE** was served by professional service of process on October 23, 2020. A copy was also sent by United States mail, first-class postage prepaid on October 23, addressed to the following:

**TO: Brian Truckey
Griggs Ferndale, LLC, d/b/a Ferndale Market
1845 MT Highway 209
Bigfork, MT 59911**

DATED this 22nd day of October 2020.



Robert Lishman
Nicholas Domitrovich
Special Assistant Attorneys General
DPHHS, Office of Legal Affairs

**STATE OF MONTANA
OFFICE OF THE GOVERNOR
EXECUTIVE ORDER No. 2-2020**

**EXECUTIVE ORDER DECLARING A STATE OF EMERGENCY TO EXIST WITHIN
THE STATE OF MONTANA RELATED TO THE COMMUNICABLE DISEASE
COVID-19 NOVEL CORONAVIRUS**

WHEREAS, the World Health Organization has declared the worldwide outbreak of COVID-19 Novel Coronavirus a pandemic;

WHEREAS, as of March 10, 2020, the United States Centers for Disease Control and Prevention (CDC) indicates there are over 125,000 confirmed cases of COVID-19 worldwide with over 900 confirmed cases in the United States;

WHEREAS, most states in the United States are experiencing confirmed cases of COVID-19;

WHEREAS, the Montana Department of Public Health and Human Services (DPHHS) recognizes COVID-19 as a threat to the residents of Montana;

WHEREAS, although there are presently no confirmed cases in Montana, the Montana DPHHS, local health departments, health and medical departments and local jurisdictions have activated response plans and protocols to prepare for the arrival of the virus in Montana;

WHEREAS, these partners have also worked to identify, contact, and test individuals in the State of Montana who have been potentially exposed to COVID-19 in coordination with the CDC;

WHEREAS, proactively implementing mitigation measures to slow the spread of the virus is in the best interests of the State of Montana and its people;

WHEREAS, COVID-19, a respiratory disease that can result in serious illness or death, is caused by SARS-CoV-2 Virus, which is a new strain of Coronavirus that had not been previously identified in humans and can easily spread from person-to-person;

WHEREAS, the CDC identifies the potential public health threat posed by COVID-19 both globally and in the United States as “high,” and has advised that person-to-person spread of COVID-19 will continue to occur globally, including within the United States;

WHEREAS, on January 31, 2020, the United States Department of Health and Human Services (DHHS) Secretary Alex Azar, declared a public health emergency for COVID-19 beginning on January 27, 2020;

WHEREAS, on March 3, 2020, Governor Bullock formed a Multi-Agency Executive Task Force to prepare the State for COVID-19;

WHEREAS, on March 3, 2020, Governor Bullock activated the Montana Disaster and Emergency Services State Emergency Coordination Center;

WHEREAS, the Montana State Emergency Coordination Center is coordinating resources across state government to support the Montana DPHHS and local officials in alleviating the impacts to people, property, and infrastructure, and is assessing the magnitude of the incident within the State;

WHEREAS, the circumstances of this outbreak may exceed the capacity of the services, personnel, equipment, supplies and facilities of any single jurisdiction and the combined forces of a mutual aid region or regions to combat;

WHEREAS, the availability and utilization of all necessary state government services, equipment, and suppliers under this declaration will further the efforts to protect health and safety and to preserve the lives, property, and resources of the people of the State of Montana;

WHEREAS, in addition to the disaster/emergency authorities specified in Title 10 of the Montana Code Annotated, Montana law also authorizes the State to coordinate and direct a coordinated public health response to communicable disease outbreaks as specified in Title 50; and

WHEREAS, under these conditions pursuant to §§ 10-3-302, 10-3-311, and 10-3-312, MCA, the Governor may mobilize state resources to protect life, health, and property and may expend funds up to the amount determined by the Office of Budget and Program Planning to meet contingencies and needs arising from these conditions.

NOW, THEREFORE, I, STEVE BULLOCK, Governor of the State of Montana, pursuant to the authority vested in me as Governor under the Constitution and the laws of the State of Montana, Title 10, Chapter 3, MCA, and under other applicable statutes, do hereby declare that an emergency exists statewide, as defined in §§ 10-3-103 and 10-3-302, MCA.

This Order is effective immediately.

**STATE OF MONTANA
OFFICE OF THE GOVERNOR
EXECUTIVE ORDER No. 3-2020**

**EXECUTIVE ORDER AMENDING EXECUTIVE ORDER 2-2020 AND PROVIDING
THAT THE STATE OF EMERGENCY RUNS CONCURRENT WITH THE
PRESIDENT'S EMERGENCY DECLARATION**

WHEREAS, on March 12, 2020, I declared a state of emergency to exist in Montana related to the communicable disease COVID-19 Novel Coronavirus;

WHEREAS, on March 13, 2020, the President of the United States declared a national state of emergency due to a nationwide outbreak of COVID-19;

WHEREAS, Montana remains committed to a unified, coordinated response to stem the spread of COVID-19; and

WHEREAS, under Montana law, § 10-3-302(3), MCA, a declaration of emergency by the President of the United States establishes continuing conditions of emergency.

NOW, THEREFORE, I, STEVE BULLOCK, Governor of the State of Montana, pursuant to the authority vested in me as Governor under the Constitution and the laws of the State of Montana, Title 10, Chapter 3, MCA, and under other applicable statutes, do hereby amend Executive Order 2-2020 to run concurrent to the emergency declaration of the President of the United States establishing continuing conditions of the state of emergency, as defined in §§ 10-3-103 and 10-3-302(3), MCA.

This Order is effective immediately.

GIVEN under my hand and the GREAT SEAL of the State of Montana this 13 day of March 2020.



STEVE BULLOCK, Governor

ATTEST:


COREY STAPLETON, Secretary of State



OFFICE OF THE GOVERNOR
STATE OF MONTANA

STEVE BULLOCK
GOVERNOR



MIKE COONEY
LT. GOVERNOR

TO: Montanans; all officers and agencies of the State of Montana
FROM: Governor Steve Bullock
DATE: March 26, 2020
RE: Directive Implementing Executive Orders 2-2020 and 3-2020 providing measures to stay at home and designating certain essential functions

Executive Orders 2-2020 and 3-2020 declare that a state of emergency exists in Montana due to the global outbreak of COVID-19 Novel Coronavirus.

Section 10-3-104(2)(a), MCA, authorizes the Governor, during a state of emergency, to “suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or orders or rules of any state agency if the strict compliance with the provisions of any statute, order, or rule would in any way prevent, hinder, or delay necessary action in coping with the emergency or disaster.” Further, it authorizes the Governor to “control ingress and egress to and from an incident or emergency or disaster area, the movement of persons within the area, and the occupancy of premises within the area.” Section 10-3-104(2)(c), MCA. Montana’s public health laws also authorize the Department of Public Health and Human Services (DPHHS or Department), acting under the Governor’s direction, to “issue written orders for correction” of “conditions of public health importance,” to “prevent and mitigate conditions of public health importance” through measures including “isolation and quarantine” and “abatement of public health nuisances.” Section 50-1-202, MCA. The Department, under the Governor’s direction, may also take action to correct public health deficiencies in “buildings or facilities where people congregate.” Section 50-1-203, MCA. The Department, under the Governor’s direction, is also authorized to impose quarantine and isolation measures to protect public health. Section 50-1-204, MCA. Montana law provides that these authorities will be utilized to respond to an “outbreak of disease,” § 10-3-103(4), MCA, and to “limit the transmission of the communicable disease.” *See, e.g.*, § 50-1-101(6), MCA.

COVID-19 is a contagion that most frequently spreads person to person. The virus may live on surfaces and remain in the air after someone coughs or sneezes for an unknown period of time, creating a range of opportunities for exposure. Exposure can also happen when a person touches a surface or object that has the live virus on it and then touches one’s face. Montana currently faces an emergency statewide, with infections or the imminent threat of infections present across the state. Accordingly, for the preservation of public health and safety throughout the entire State of Montana, to protect those most at-risk, and to avoid overwhelming our health care delivery system, I have determined that additional measures consistent with public health guidance are necessary to slow and stop the spread of COVID-19.

To curtail the spread of the COVID-19 pandemic in Montana, and to protect the health and economic wellbeing of all Montanans, it is necessary immediately to implement measures to ensure social distancing to prevent the spread of disease. Such an approach will reduce the overall number of infections in the state and preserve increasingly scarce health care resources. In consultation with public health experts, health care providers, and emergency management professionals, I have determined that to protect public health and human safety, it is essential to the health, safety, and

welfare of the State of Montana during the ongoing state of emergency that, to the maximum extent possible, individuals stay at home or at their place of residence.

Pandemics are not without precedent in Montana. Neither are the measures necessary to stop the spread of communicable disease and respond to the emergency. During the Spanish Influenza outbreak of 1918, public health authorities closed schools and other public places. These measures can save lives across the United States now. Montana must act now, before its own rate of infection mirrors that of other states. While the times ahead will not be easy, Montanans have always pulled together in times of crisis. This crisis is no different, and will require all Montanans, collectively, to do their individual part to slow the growth of COVID-19 infections and protect their friends, family, and neighbors from this dangerous infection.

In accordance with the authority vested in me under the Constitution, Article VI, Sections 4 and 13, and the laws of the State of Montana, Title 10, Chapter 3 and Title 50, Chapter 1, MCA, and other applicable provisions of the Constitution and Montana Law, I hereby direct the following measures be in place in the State of Montana effective statewide at 12:01 a.m. on March 28, 2020, through April 10, 2020:

I. Stay at Home; Social Distancing Requirements; and Essential Businesses and Operations

- **1. Stay at home or place of residence.** With exceptions as outlined below, all individuals currently living within the State of Montana are directed to stay at home or at their place of residence to the greatest extent possible, except as allowed in this Directive. As used in this Directive, homes or residences include hotels, motels, shared rental units, shelters, and similar facilities.

Non-essential social and recreational gatherings of individuals outside of a home or place of residence are prohibited, regardless of size, if a distance of at least six feet between individuals cannot be maintained.

All persons may leave their homes or place of residence only for Essential Activities or to operate Essential Businesses and Operations, all as defined below.

Individuals whose residences are unsafe or become unsafe, such as victims of domestic violence, are permitted and urged to leave their home and stay at a safe alternative location.

- **2. Non-essential business and operations to cease.** All businesses and operations in the State, except Essential Businesses and Operations as defined below, are required to cease all activities within the State except Minimum Basic Operations, as defined below. Businesses may also continue operations consisting exclusively of employees or contractors performing activities at their own residences (i.e., working from home).

To the greatest extent feasible, Essential Businesses and Operations shall comply with Social Distancing Requirements as defined in this Directive, including by maintaining six-foot social distancing for both employees and members of the public at all times, including, but not limited to, when any customers are standing in line. Essential Businesses and Operation should also employ, where feasible, telework or other remote working opportunities to limit disease spread.

- **3. Prohibited activities.** All public and private gatherings of any number of people occurring outside a household or living unit are prohibited, except for the limited purposes permitted by this Directive.

The March 24, 2020 Directive that closes certain businesses to ingress, egress, and occupancy by the public, while expanding delivery and to-go options, remains in effect. However, the portions of that order requiring social distancing (Section 1) and social distancing guidelines for retail businesses (Section 3) are superseded by the requirements in this Directive.

- **4. Prohibited and permitted travel.** All travel should be limited to Essential Travel and travel for Essential Activities. People riding on public transit must comply with social distancing to the greatest extent feasible. When individuals need to leave their homes or residences, they should at all times maintain social distancing of at least six feet from any person who is not a member of their immediate household, to the greatest extent possible.
- **5. Leaving your home for essential activities is permitted.** For purposes of this Directive, individuals may leave their home or residence only to perform any of the following Essential Activities and must ensure a distance of six feet from others not in their household:

For health and safety. To engage 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), such as, by way of example only and without limitation, seeking emergency services, obtaining medical supplies or medication, or visiting a health care professional.

For necessary supplies and services. To obtain 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, groceries and food, household consumer products, supplies they need to work from home, and products necessary to maintain the safety, sanitation, and essential operation of residences.

For outdoor activity. To engage in outdoor activity, provided that individuals comply with social distancing, as defined below, such as, by way of example and without limitation, walking, hiking, running, or biking. Individuals may go to public parks and open outdoor recreation areas, including public lands in Montana provided they remain open to recreation. Montanans are discouraged from outdoor recreation activities that pose enhanced risks of injury or could otherwise stress the ability of local first responders to address the COVID-19 emergency (*e.g.*, backcountry skiing in a manner inconsistent with avalanche recommendations or in closed terrain).

For certain types of work. To perform work providing essential products and services at Essential Businesses or Operations or to otherwise carry out activities specifically permitted in this Directive, including Minimum Basic Operations.

To take care of others. To care for a family member, friend, or pet in another household, and to transport family members, friends, or pets as allowed by this Directive.

- **6. Health Care and Public Health Operations.** For purposes of this Directive, individuals may leave their residence to work for or obtain services through Health Care and Public Health Operations.

Health Care and Public Health Operations includes, but is not limited to: hospitals; clinics; dental offices; pharmacies; public health entities, including those that compile, model, analyze and communicate public health information; pharmaceutical, pharmacy, medical device and equipment, and biotechnology companies (including operations, research and development, manufacture, and supply chain); organizations collecting blood, platelets, plasma, and other necessary materials; licensed medical cannabis dispensaries and licensed cannabis cultivation centers; reproductive health care providers; eye care centers, including those that sell glasses and contact lenses; home Health Care services providers; mental health and substance use providers; other Health Care facilities and suppliers and providers of any related and/or ancillary Health Care services; and entities that transport and dispose of medical materials and remains.

Specifically included in Health Care and Public Health Operations are manufacturers, technicians, logistics, and warehouse operators and distributors of medical equipment, personal protective equipment (PPE), medical gases, pharmaceuticals, blood and blood products, vaccines, testing materials, laboratory supplies, cleaning, sanitizing, disinfecting or sterilization supplies, and tissue and paper towel products.

Health Care and Public Health Operations also includes veterinary care and all Health Care services provided to animals.

Health Care and Public Health Operations shall be construed broadly to avoid any impacts to the delivery of Health Care, broadly defined. Health Care and Public Health Operations does not include fitness and exercise gyms, spas, salons, barber shops, tattoo parlors, and similar facilities.

- **7. Human Services Operations.** For purposes of this Directive, individuals may leave their residence to work for or obtain services at any Human Services Operations, including any provider funded by DPHHS, or Medicaid, that is providing services to the public and including state-operated, institutional, or community-based settings providing human services to the public.

Human Services Operations includes, but is not limited to: long-term care facilities; residential settings and shelters for adults, seniors, children, and/or people with developmental disabilities, intellectual disabilities, substance use disorders, and/or mental illness; transitional facilities; home-based settings to provide services to individuals with physical, intellectual, and/or developmental disabilities, seniors, adults, and children; field offices that provide and help to determine eligibility for basic needs including food, cash assistance, medical coverage, child care, vocational services, rehabilitation services; developmental centers; adoption agencies; businesses that provide food, shelter, and social services, and other necessities of life for economically disadvantaged individuals, individuals with physical, intellectual, and/or developmental disabilities, or otherwise needy individuals.

Human Services Operations shall be construed broadly to avoid any impacts to the delivery of human services, broadly defined.

- **8. Essential Infrastructure.** For purposes of this Directive, individuals may leave their residence to provide any services or perform any work necessary to offer, provision, operate, maintain and repair Essential Infrastructure. Essential Infrastructure includes, but is not limited to: food production, distribution, storage, and sale; construction (including, but not limited to, construction required in response to this public health emergency, hospital construction, construction of long-term care facilities, public works construction, and housing construction); building management and maintenance; airport operations; aircraft fueling services; operation and maintenance of utilities, including water, sewer, and gas; electrical (including power generation, distribution, and production of raw materials); distribution centers; oil and biofuel refining; roads, highways, railroads, and public transportation; cybersecurity operations; flood control; operation of dams, locks, ditches, canals, diversions, and levies; solid waste and recycling collection and removal; and internet, video, and telecommunications systems (including the provision of essential global, national, and local infrastructure for computing services, business infrastructure, communications, and web-based services).

Essential Infrastructure shall be construed broadly to avoid any impacts to essential infrastructure, broadly defined.

- **9. Governmental Functions.** All first responders, emergency management personnel, emergency dispatchers, court personnel, law enforcement and corrections personnel, hazardous materials responders, child protection and child welfare personnel, fire protection personnel, wildland fire fighters, housing and shelter personnel, military, government employees involved in training the above functions, and other government employees are categorically exempt from this Directive. For purposes of this Directive, state government employees are categorically exempt from this Directive. Local governments are permitted to designate which functions and employees are essential and exempt for the purposes of this Directive, apart from those positions and functions named above.

This Directive does not apply to the United States government. Nothing in this Directive shall prohibit any individual from performing or accessing Essential Governmental Functions.

Nothing in this Directive shall be interpreted or applied in a way that interferes with or supersedes tribal sovereignty.

- **10. Businesses covered by this Directive.** For the purposes of this Directive, covered businesses include any for-profit, non-profit, or educational entities, regardless of the nature of the service, the function it performs, or its corporate or entity structure.
- **11. Essential Businesses and Operations.** For the purposes of this Directive, Essential Businesses and Operations means Health Care and Public Health Operations, Human Services Operations, Essential Governmental Functions, and Essential Infrastructure, and the following:¹

¹ On March 19, 2020, the U.S. Department of Homeland Security, Cybersecurity & Infrastructure Security Agency, issued a *Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response*, available at: <https://www.cisa.gov/publication/guidance-essential-critical-infrastructure-workforce>. The definition of Essential Businesses and Operations in this Order is meant to encompass the workers identified in that Memorandum.

- a. **Stores that sell groceries and medicine.** Grocery stores, pharmacies, farm and produce stands, supermarkets, convenience stores, and other establishments engaged in the retail sale of groceries, canned food, dry goods, frozen foods, fresh fruits and vegetables, pet supplies, fresh meats, fish, and poultry, alcoholic and non-alcoholic beverages, and any other household consumer products (such as cleaning and personal care products). This includes stores that sell groceries, medicine, including medication not requiring a medical prescription, and also that sell other non-grocery products, and products necessary to maintaining the safety, sanitation, and essential operation of residences and Essential Businesses and Operations;
- b. **Food and beverage production and agriculture.** Food and beverage manufacturing, production, processing, and cultivation, including farming, livestock, fishing, baking, and other production agriculture, including cultivation, marketing, production, and wholesale or retail distribution of animals and goods for consumption; licensed medical cannabis dispensaries and licensed cannabis cultivation centers; and businesses that provide food, shelter, and other necessities of life for animals, including veterinary and animal health services, animal shelters, rescues, shelters, kennels, and adoption facilities; businesses that provide equipment, transportation, seed, feed, fertilizer, or other products or services critical to food and livestock production;
- c. **Organizations that provide charitable and social services.** Businesses and religious and secular nonprofit organizations, including food banks, when providing food, shelter, and social services, and other necessities of life for economically disadvantaged or otherwise needy individuals, individuals who need assistance as a result of this emergency, and people with disabilities;
- d. **Media.** Newspapers, television, radio, and other media services;
- e. **Gas stations and businesses needed for transportation.** Gas stations and auto supply, auto repair, and related facilities and bicycle shops and related facilities;
- f. **Financial and real estate services and institutions.** Banks, consumer lenders, including but not limited, to pawnbrokers, accountants, consumer installment lenders and sales finance lenders, credit unions, appraisers, realtors or others providing real estate services, title companies, financial markets, trading and futures exchanges, affiliates of financial institutions, entities that issue bonds, related financial institutions, and institutions selling financial products;
- g. **Hardware and supply stores.** Hardware stores and businesses that sell electrical, plumbing, and heating material;
- h. **Critical trades.** Building and Construction Tradesmen and Tradeswomen, and other trades including but not limited to plumbers, electricians, exterminators, cleaning and janitorial staff for commercial and governmental properties, security staff, operating engineers, HVAC, painting, moving and relocation services, and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences, Essential Activities, and Essential Businesses and Operations;
- i. **Mail, post, shipping, logistics, delivery, and pick-up services.** Post offices and other businesses that provide shipping and delivery services, and businesses that ship or deliver groceries, food, alcoholic and non-alcoholic beverages, goods or services to end users or through commercial channels;
- j. **Educational institutions.** Educational institutions—including public and private pre-K-12 schools, colleges, and universities—for purposes of facilitating remote learning, performing critical research, or performing other essential functions

consistent with prior Directives on school closures and the continued provision of certain services, provided that social distancing of six-feet per person is maintained to the greatest extent possible. This Directive is consistent with and does not amend or supersede the March 24, 2020 Directive closing non-residential public schools through April 10, 2020;

- k. **Laundry services.** Laundromats, dry cleaners, industrial laundry services, and laundry service providers;
- l. **Restaurants for consumption off-premises.** Restaurants and other facilities that prepare and serve food, but only for consumption off-premises, through such means as in-house delivery, third-party delivery, drive-through, curbside pick-up, and carry-out. Schools and other entities that typically provide food services to students or members of the public may continue to do so under this Directive on the condition that the food is provided to students or members of the public on a pick-up and takeaway basis only. Schools and other entities that provide food services under this exemption shall not permit the food to be eaten at the site where it is provided, or at any other gathering site due to the virus's propensity to physically impact surfaces and personal property.

This exception is to be interpreted consistent with the restrictions on on-premises dining and beverage businesses, as well as the expanded options for delivery and take out, provided in the March 24, 2020 Directive, Section 2.;

- m. **Supplies to work from home.** Businesses that sell, manufacture, or supply products needed for people to work from home;
- n. **Supplies for Essential Businesses and Operations.** Businesses that sell, manufacture, or supply other Essential Businesses and Operations with the support or materials necessary to operate, including computers, audio and video electronics, household appliances; IT and telecommunication equipment; hardware, paint, flat glass; electrical, plumbing and heating material; sanitary equipment; personal hygiene products; food, food additives, ingredients and components; medical and orthopedic equipment; optics and photography equipment; diagnostics, food and beverages, chemicals, soaps and detergent; and firearm and ammunition suppliers and retailers for purposes of safety and security;
- o. **Transportation.** Airlines, taxis, transportation network providers (such as Uber and Lyft), vehicle rental services, paratransit, and other private, public, and commercial transportation and logistics providers necessary for Essential Activities and other purposes expressly authorized in this Directive;
- p. **Home-based care and services.** Home-based care for adults, seniors, children, and/or people with developmental disabilities, intellectual disabilities, substance use disorders, and/or mental illness, including caregivers such as nannies who may travel to the child's home to provide care, and other in-home services including meal delivery;
- q. **Residential facilities and shelters.** Residential facilities and shelters for adults, seniors, children, and/or people with developmental disabilities, intellectual disabilities, substance use disorders, and/or mental illness;
- r. **Professional services.** Professional services, such as legal services, accounting services, insurance services, information technology services, real estate services (including appraisal and title services);

- s. **Manufacture, distribution, and supply chain for critical products and industries.** Manufacturing companies, distributors, and supply chain companies producing and supplying essential products and services in and for industries such as pharmaceutical, technology, biotechnology, Health Care, chemicals and sanitization, waste pickup and disposal, agriculture, food and beverage, transportation, energy, steel and steel products, petroleum and fuel, forest products, mining, construction, national defense, communications, as well as products used by other Essential Businesses and Operations.
 - t. **Critical labor union functions.** Labor union essential activities including the administration of health and welfare funds and personnel checking on the wellbeing and safety of members providing services in Essential Businesses and Operations – provided that these checks should be done by telephone or remotely where possible.
 - u. **Hotels and motels.** Hotels and motels, to the extent used for lodging and delivery or carry-out food services.
 - v. **Funeral services.** Funeral, mortuary, cremation, burial, cemetery, and related services.
- **12. Social Distancing Requirements for Essential Businesses and Operations.** Essential Businesses and Operations and businesses engaged in Minimum Basic Operations must take proactive measures to ensure compliance with Social Distancing Requirements, including where possible:
 - a. **Designate six-foot distances.** Designating with signage, tape, or by other means six-foot spacing for employees and customers in line to maintain appropriate distance;
 - b. **Hand sanitizer and sanitizing products.** Having hand sanitizer and sanitizing products readily available for employees and customers;
 - c. **Separate operating hours for vulnerable populations.** Implementing separate operating hours for elderly and vulnerable customers; and
 - d. **Online and remote access.** Posting online whether a facility is open and how best to reach the facility and continue services by phone or remotely.
 - **13. Minimum Basic Operations.** For the purposes of this Directive, Minimum Basic Operations include the following, provided that employees comply with Social Distancing Requirements, to the extent possible, while carrying out such operations:
 - a. The minimum necessary activities to maintain the value of the business’s inventory, preserve the condition of the business’s physical plant and equipment, ensure security, process payroll and employee benefits, or for related functions.
 - b. The minimum necessary activities to facilitate employees of the business being able to continue to work remotely from their residences.
 - **14. Essential Travel.** For the purposes of this Directive, Essential Travel includes travel for any of the following purposes:
 - a. Any travel related to the provision of or access to Essential Activities, Essential Businesses and Operations, or Minimum Basic Operations.
 - b. Travel to care for elderly, minors, dependents, persons with disabilities, or other vulnerable persons.

- c. Travel to or from educational institutions for purposes of receiving materials for distance learning, for receiving meals, and any other related services.
- d. Travel to return to a place of residence from outside the jurisdiction.
- e. Travel required by law enforcement or court order, including to transport children pursuant to a custody agreement.
- f. Travel required for non-residents to return to their place of residence outside the State. Individuals are strongly encouraged to verify that their transportation out of the State remains available and functional prior to commencing such travel.

- **15. Intent of this Directive.** The intent of this Directive is to ensure that the maximum number of people self-isolate in their places of residence to the maximum extent feasible, while enabling essential services to continue, to slow the spread of COVID-19 to the greatest extent possible. These measures are designed to end the epidemic as early as possible, and to protect the well-being of Montanans by returning to the course of business and everyday life as soon as is practicable and safe. When people need to leave their places of residence, whether to perform Essential Activities, or to otherwise facilitate authorized activities necessary for continuity of social and commercial life, they should at all times and as much as reasonably possible comply with Social Distancing Requirements. All provisions of this Directive should be interpreted to effectuate this intent.

II. Directive Is Public Health Order and Enforceable By County Attorney

- This Directive, along with any prior Directive that implements and references the public health authorities of the Department of Public Health and Human Services (DPHHS) provided in Title 50, constitutes a “public health . . . order[]” within the meaning of § 50-1-103(2), MCA, and is enforceable by the Attorney General, DPHHS, a county attorney, or other local authorities under the direction of a county attorney.

III. Local Public Health Agencies to Assist in Administration of this Public Health Order

- Local public health agencies are directed to assist in the administration of this Directive, consistent with § 50-1-202(2)(a), MCA.

IV. Less-Restrictive Local Ordinances Preempted

- This Directive is in effect statewide in Montana. In the interest of uniformity of laws and to prevent the spread of disease, all inconsistent emergency county health ordinances are preempted by this Directive, but only to the extent they are less restrictive. Counties may adopt more restrictive ordinances.

Authorities: Section 10-3-104, MCA; §§ 50-1-103, -202, -203, and -204, MCA; Executive Orders 2-2020 and 3-2020; Montana Constitution, Art. VI, Sections 4 and 13; §§ 10-3-103, -302, and -305, MCA; and all other applicable provisions of state and federal law.

Limitations

- This Directive is effective at 12:01 a.m. on March 28, 2020 through April 10, 2020.
- This Directive shall be implemented consistent with applicable law and subject to the availability of appropriations.
- If any provision of this Directive or its application to any person or circumstance is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Directive, which can be given effect without the invalid provision or

application. To achieve this purpose, the provisions of this Directive are declared to be severable.

- This Directive is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the State of Montana, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



MONTANA

REOPENING THE BIG SKY PHASED APPROACH



Message From Governor Bullock

To my fellow Montanans:

In times of crisis, Montanans have always pulled together, and this time has been no different. We have been aggressively managing the virus.

As a result of the actions we have taken, we have among the lowest number of COVID-19 cases in the nation. Montana also has the lowest number of hospitalizations, per capita, in the nation.

We have slowed the spread of this virus and saved lives.

These collective actions have allowed us to get to where we are today – to begin a phased reopening of the state.

I recognize that for over the past five weeks Montanans all across the state have gone to incredible lengths to protect our families, friends and the greater Montana community. We have made these sacrifices for health care workers. We have done so for all the other frontline workers in this crisis. We have done so for those most vulnerable to severe illness from this disease. From the start of this pandemic, I have been incredibly inspired each and every day by how Montanans have come together as a community and by how Montanans have taken the directives seriously to keep our fellow Montanans healthy and safe.

While there is reason for optimism, I am going to ask Montanans to continue looking out for our neighbors who need it the most and to continue being vigilant in every step we take. Because just as important as it was for us to act as a community beginning five weeks ago, that still holds true to this day – and moving forward.

Once we begin to reopen, we want to be able to stay open. Our personal responsibility to protect those around us – particularly those most vulnerable – remains just as important as any time during this pandemic.

We have done this the Montana way by taking care of our neighbors when things get tough, and we will continue to do so. Thank you for doing what is best for the state of Montana, best for Montana workers, and best for the future of Montana's children.



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Phased Approach

- **BASED ON UP-TO-DATE DATA AND PREPAREDNESS.**
- **MITIGATES RISK OF RESURGENCE.**
- **PROTECTS THE MOST VULNERABLE.**
- **IMPLEMENTABLE ON STATEWIDE, TRIBAL, OR COUNTY-BY-COUNTY BASIS.**
- **ABILITY TO ADJUST THE PHASES** BASED ON WHAT IS HAPPENING LOCALLY AND/OR REGIONALLY.



As the State Begins a Phased Reopening the Following Areas Will be Considered

PUBLIC HEALTH

- Evaluation of new cases over time.
- Ability to conduct active monitoring and contact tracing.
- Syndromic surveillance (e.g. respiratory symptoms).

HEALTHCARE

- Ability of hospitals to safely treat all patients, both COVID-19 and those with other conditions.
- Adequate hospital Intensive Care Unit (ICU) capacity.

SUPPLIES

- Capacity to test all people with COVID-19 symptoms.
- Adequate personal protective equipment.



Local Jurisdictional Considerations

- Elected officials should coordinate on a regional basis to satisfy these criteria and to progress through the phases outlined in this document.
- Local jurisdictions can enact guidelines that are more restrictive than the State guidelines.



Core Preparedness Responsibilities

TESTING AND CONTACT TRACING

- Ability to test symptomatic people for COVID-19 and trace contacts of COVID+ results.
- Ensure sentinel sites are screening for asymptomatic cases and contacts for COVID+ results are traced (sites operate at locations that serve older individuals, at-risk/vulnerable individuals, lower-income Americans, racial minorities, American Indians, and Correctional Institutions).

HEALTHCARE SYSTEM CAPACITY

- Ability to quickly and independently supply sufficient personal protective equipment and critical medical equipment to handle dramatic surge.
- Ability to surge Intensive Care Unit (ICU) capacity.



Core Preparedness Responsibilities Continued

PLANS

- Protect the health and safety of all Montana citizens.
- Protect the health and safety of those living and working in high-risk facilities (e.g. senior care facilities).
- Provide for the safety of those who use transportation where people congregate amongst one another (airlines, buses, trains, etc.).
- Advise citizens and employers regarding protocols for social distancing and face coverings.
- Monitor conditions and immediately take steps to limit and mitigate any rebounds or outbreaks by restarting a phase or returning to an earlier phase, depending on severity.



Schools

- Beginning May 7, 2020 all schools have the option to return to in-classroom teaching delivery.
- The State recognizes that if reopened, schools will require the district to make adjustments and create plans, policies, and procedures.
- If schools plan to reopen they should consider:
 - Implementing an alternative educational delivery model that includes a mix of in-person and remote learning.
 - Providing focused individual education, especially for at-risk students.
 - How to reconnect and meet the educational needs of students who fall behind in a remote learning environment.
 - The importance of maintaining the connection between students, teachers, and parents.
 - The important role that schools play in the health of students, families, and communities.
 - Graduation environments that can meet the social distancing requirements.



Guidelines for All Phases: Individuals

CONTINUE TO PRACTICE GOOD HYGIENE

- Wash your hands with soap and water or use hand sanitizer, especially after touching frequently used items or surfaces.
- Avoid touching your face.
- Sneeze or cough into a tissue, or the inside of your elbow.
- Disinfect frequently used items and surfaces as much as possible.
- Strongly consider using non-medical face coverings while in public, especially in circumstances that do not readily allow for appropriate physical distancing (grocery/retail stores, pharmacies, public transportation, etc.).

PEOPLE WHO FEEL SICK SHOULD STAY HOME

- Do not go to work or school.
- Contact and follow the advice of your medical provider.
- Follow local health department guidance on isolation and quarantine.



Guidelines for All Phases: Employers

Develop and implement appropriate policies, in accordance with Federal, State, and local regulations and guidance, and informed by industry best practices, regarding:

- Social distancing and protective equipment.
- Temperature checks and/or symptom screening.
- Collaborate with public health on testing, isolating, and contact tracing.
- Sanitation.
- Use and disinfection of common and high-traffic areas.

Monitor workforce for indicative symptoms. Do not allow people with symptoms of COVID-19 to work.

Collaborate with public health when implementing policies and procedures for workforce contact tracing following an employee COVID+ test.



PHASE ONE



Phase One: Individuals

- **ALL VULNERABLE INDIVIDUALS** should continue to follow the stay home guidance. Members of households with vulnerable residents should be aware that by returning to work or other environments where distancing is not practical, they could carry the virus back home. Precautions should be taken to isolate from vulnerable residents.
 - *Vulnerable Individuals: people over 65 years of age and/or those with serious underlying health conditions, including high blood pressure, chronic lung disease, diabetes, obesity, asthma, and those whose immune system is compromised such as by chemotherapy for cancer and other conditions requiring such therapy.*
- All individuals (non-household), **WHEN IN PUBLIC** (e.g., parks, outdoor recreation areas, shopping areas), should maximize physical distance from others.
- Avoid **GATHERING** in groups of more than **10 people** in circumstances that do not readily allow for appropriate physical distancing.
- **MINIMIZE NON-ESSENTIAL TRAVEL** and adhere to Montana guidelines regarding quarantine.



Phase One: Employers

- Continue to **ENCOURAGE TELEWORK** whenever possible and feasible with business operations.
- When telework is not feasible it is encouraged to **ACCOMMODATE ALTERNATE WORK SCHEDULES** such as shift work and staggered scheduling in order to adhere to social distancing guidelines.
- Close **COMMON AREAS** where personnel are likely to congregate and interact; or enforce strict social distancing protocols.
- **MINIMIZE NON-ESSENTIAL BUSINESS TRAVEL.**
- **SPECIAL ACCOMMODATIONS** should be made for members of a **VULNERABLE POPULATION** or those with vulnerable household members.



Phase One: Specific Types of Employers / Activities

- **SENIOR LIVING OR ASSISTED LIVING FACILITIES** must continue to prohibit visitors. Those who do interact with residents and patients must ensure strict protocols regarding hygiene and protection are followed.
 - This includes daily screening of staff for symptoms and preventing ill workers from working.
- **CHILD CARE FACILITIES** can remain operational but should follow State and local guidelines regarding operational levels and occupancy.
- **ORGANIZED YOUTH ACTIVITIES** can consider becoming operational if physical distancing guidelines can be implemented. Avoid **GATHERING** in groups of more than **10 people** in circumstances that do not readily allow for appropriate physical distancing.
- **RESTAURANTS / BARS / BREWERIES / DISTILLERIES / CASINOS** can become operational on or after May 4, 2020 under strict physical distancing and reduced capacity protocols in accordance with State guidelines.
 - All patrons must be out of bars, restaurants, and casinos by 11:30.



Phase One: Specific Types of Employers / Activities Continued

- **MAIN STREET AND RETAIL BUSINESSES** can become operational on or after April 27, 2020 with reduced capacity and where strict physical distancing protocols can be maintained.
- **GYMS / POOLS / HOT TUBS** remain closed.
- **OUTDOOR RECREATION** can become operational if sites adhere to strict physical distancing between groups and exercise frequent sanitation protocols if public facilities are open.
- **PLACES OF WORSHIP** can become operational on or after April 26, 2020 with reduced capacity and where strict physical distancing protocols can be maintained between non-household members. Avoid **GATHERING** in groups of more than **10 people** in circumstances that do not readily allow for appropriate physical distancing.
- Other **PLACE OF ASSEMBLY** shall remain closed (e.g., movie and performance theaters, concert halls, bowling alleys, bingo halls, and music halls).



PHASE TWO

- Gatherings may expand to 50 people.
- Vulnerable populations should continue to follow stay home guidance.
- Gyms / Pools / Hot Tubs can become operational.
- In addition to houses of worship, other places of assembly can become operational under the group size restrictions and physical distancing guidelines in this phase.



Phase Two: Individuals and Employers

- Avoid **GATHERING** in groups of more than **50 people** in circumstances that do not readily allow for appropriate physical distancing.
- **NON-ESSENTIAL TRAVEL** guidelines remain the same as **PHASE ONE** for individuals traveling into Montana and for Montanans returning home.
- **VULNERABLE INDIVIDUALS** should continue to adhere to the stay home guidance.
- Continue to **ENCOURAGE TELEWORK** as much as possible and where feasible but refer to guideline in **PHASE ONE** when telework is not possible.
- **SENIOR LIVING OR ASSISTED LIVING FACILITIES** must continue to follow the guidelines of **PHASE ONE**.
- **CHILD CARE FACILITIES** can increase capacity if physical distancing guidelines can be implemented.
- **ORGANIZED YOUTH ACTIVITIES** remain operational and should avoid **GATHERING** in groups of more than **50 people** in circumstances that do not readily allow for appropriate physical distancing.



Phase Two: Individuals and Employers Continued

- **ALL BUSINESSES** can remain operational and must adhere to physical distancing.
- **RESTAURANTS / BARS / BREWERIES / DISTILLERIES / CASINOS** remain in the same operational status as **PHASE ONE**, but with an increase in capacity.
- **GYMS / POOLS / HOT TUBS** can become operational with reduced capacity and only if they can adhere to strict physical distancing and they exercise frequent sanitation protocols.
- **OUTDOOR RECREATION** remain in the same operational status as **PHASE ONE**.
- **PLACES OF ASSEMBLY** can become operational with reduced capacity and must adhere to physical distancing. Avoid **GATHERING** in groups of more than **50 people** in circumstances that do not readily allow for appropriate physical distancing.



PHASE THREE

- No limit on group size.
- Vulnerable populations can resume public interactions, but should practice physical distancing, and continue to take precautionary measures.



Phase Three: Individuals and Employers

- **ALL INDIVIDUALS** and **EMPLOYERS** should continue to operate consistent with updated CDC guidelines.
- For **ALL INDIVIDUALS** there is no limit on group size, however everyone should consider minimizing contact time with others and limit time spent in crowded environments.
- **VULNERABLE INDIVIDUALS** can resume public interactions, but should practice physical distancing, and continue to take precautionary measures.
- Employers can resume **FULL STAFFING** of workplaces.
- Visits to **SENIOR CARE FACILITIES** can resume. Those who interact with residents and patients must be diligent regarding hygiene.
- **ALL BUSINESSES / PLACES OF ASSEMBLY** can remain fully operational with awareness of physical distancing.



Phase Three: Individuals and Employers

- **GYMS / POOLS / HOT TUBS** can remain fully operational but must still exercise frequent sanitation protocols.
- **OUTDOOR RECREATION** Interstate tourism travel resumes. Campground, group-use facilities, playgrounds and visitor centers are fully open.
- There is no limit on **GROUP SIZE** during this phase, however **PHYSICAL DISTANCING** should still be observed.
- Continue to follow **GUIDELINES FOR ALL PHASES.**



Resources

- For a comprehensive list of resources and guidelines please visit the Centers for Disease Control (CDC) and Prevention and the Montana Department of Public Health and Human Service's (DPHHS) websites at:
 - www.cdc.gov
 - <https://dphhs.mt.gov>

OFFICE OF THE GOVERNOR
STATE OF MONTANA

STEVE BULLOCK
GOVERNOR



MIKE COONEY
LT. GOVERNOR

TO: Montanans; all officers and agencies of the State of Montana
FROM: Governor Steve Bullock
DATE: May 19, 2020
RE: Directive implementing Executive Orders 2-2020 and 3-2020 and establishing conditions for Phase Two

This Directive provides the conditions for the second phase of the phased reopening of Montana.

Executive Orders 2-2020 and 3-2020 declare that a state of emergency exists in Montana due to the global outbreak of COVID-19 Novel Coronavirus.

For the duration of the emergency, § 10-3-104(2)(a), MCA, provides authority to the Governor to “suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or orders or rules of any state agency if the strict compliance with the provisions of any statute, order, or rule would in any way prevent, hinder, or delay necessary action in coping with the emergency or disaster.” Further, the statute authorizes the Governor to “control ingress and egress to and from an incident or emergency or disaster area, the movement of persons within the area, and the occupancy of premises within the area.” Section 10-3-104(2)(c), MCA.

In addition, Montana’s public health laws authorize the Department of Public Health and Human Services (DPHHS or Department), acting under the Governor’s direction, to “issue written orders for correction” of “conditions of public health importance,” to “prevent and mitigate conditions of public health importance” through measures including “isolation and quarantine” and “abatement of public health nuisances.” Section 50-1-202, MCA. The Department, under the Governor’s direction, may take action to correct public health deficiencies in “buildings or facilities where persons assemble.” Section 50-1-203, MCA. The Department, under the Governor’s direction, is also authorized to impose quarantine and isolation measures to protect public health. Section 50-1-204, MCA. Montana law provides that these authorities will be utilized to respond to an “outbreak of disease,” § 10-3-103(4), MCA, and to “limit the transmission of the communicable disease.” *See, e.g.,* § 50-1-101(6), MCA.

On March 15, 2020, I issued a Directive closing non-residential public schools in Montana through March 27. On March 24, I extended non-residential public school closures through April 10. The March 24 Directive also closed certain on-premises dining and beverage businesses while expanding and encouraging delivery, takeout, and drive-up options. On March 26, 2020, I issued a Directive providing that, to the maximum extent possible, all individuals stay at their home or place of residence unless engaging in certain essential activities or functions through April 10. This Directive also required the temporary closure of non-essential businesses, provided social distancing requirements, and limited non-essential travel. On March 30, I issued a Directive limiting evictions, foreclosures, and disconnections through April 10. On March 30, I also issued a Directive requiring a 14-day self-quarantine for individuals arriving in Montana for non-work-related travel through April 10. On April 7, I extended these Directives through April 24. I also issued a Directive providing additional guidance related to evictions and providing a rent assistance program on April 13, effective through April 24. I

have also issued other Directives that, unlike these, are effective for the duration of the state of emergency.

Montana's response to COVID-19 has been necessary to slow the spread of new infections. These efforts have been effective. To date, our health care system has not been overwhelmed and we continue to work to increase our testing capacity. Through the collective efforts of all Montanans to reduce the transmission of COVID-19, Montana now has fewer than two dozen active cases and one of the lowest per capita rates of infection in the United States.

Accordingly, on April 22, 2020, I issued a Directive and guidelines for a phased reopening of Montana. The April 22 Directive provided guidance applicable to all phases and established the conditions for Phase One. I expanded some of the conditions for Phase One through an additional Directive on May 8, 2020.

I have developed Montana's phased reopening plan by relying on scientific evidence and data, and in consultation with public health experts, healthcare providers, business leaders, and emergency management professionals. This phased approach is based on up-to-date data and statewide preparedness. It mitigates the risk of resurgence. It protects the most vulnerable. It can be implemented on a statewide, tribal, or county-by-county basis. And it contains the ability to adjust phases based on local or regional conditions. In consultation with public health professionals, healthcare providers, business leaders, and emergency management professionals, I have determined that the phased reopening approach described in this Directive is necessary in coping with and responding to the emergency.

This Directive is the next step in Montana's reopening, to Phase Two. I stress, however, that individual responsibility—such as good hygiene, frequent cleaning of highly-touched surfaces, and strict adherence to social distancing—remains Montana's best tool in the fight against new infections. This Directive is not an invitation to forget the lessons that Montana has learned in its fight against COVID-19 these past months. Rather, it is a framework to apply those lessons as we move toward a new normal. In so doing, we must continue to place a special emphasis on protecting those in Montana most vulnerable to complications from COVID-19. That crucial work demands a collective effort by all Montanans. By continuing to take these measures seriously, we protect our family, friends, and neighbors as Montana begins to emerge from its initial encounter with COVID-19.

Local officials should coordinate on a regional basis and continue to assess the conditions in their jurisdictions. As with prior Directives, nothing in this Directive prohibits local public health authorities from adopting more restrictive approaches based on local need.

Therefore, in accordance with the authority vested in me under the Constitution, Article VI, Sections 4 and 13, and the laws of the State of Montana, Title 10, Chapter 3 and Title 50, Chapter 1, MCA, and other applicable provisions of the Constitution and Montana law, I hereby direct the following measures be in place in the State of Montana effective immediately, except where specified:

Phase-One and All-Phases Guidance to Continue Except Where Modified in this Directive

- Except where specifically modified in this Directive, the April 22 Directive, the May 8 Directive, and the related guidance applicable to all phases and to Phase One remain in effect.

Other Directives to Continue

- The March 30 and April 13 Directives providing measures to limit foreclosures, evictions, and disconnections from service and all of their terms remain in effect through May 24, unless modified by subsequent Directive, except as follows:
 - For individuals who are members of a vulnerable population, who have suffered a significant financial hardship as a result of the outbreak, and who, pursuant to this Directive, remain sheltered at home, the protections of the March 30 and April 13 Directives continue and will expire 30 days after the individual ceases to shelter at home or at the end of the emergency, whichever is sooner.
 - An individual who seeks the protection of these provisions to prevent a foreclosure, eviction, or disconnection after June 1 must make a basic showing to their bank, landlord, or utility that they are (1) sheltering in place under this order, are (2) a member of a vulnerable population, and (3) have been financially impacted as a result of the COVID-19 outbreak.
 - Before moving forward with an eviction, foreclosure, or disconnection against an individual who is a member of a vulnerable population, the entity initiating the eviction, foreclosure, or disconnection must provide adequate notice of the opportunity to seek the protection of this Directive by making the showing described above.
 - The rent and mortgage assistance program established in the April 13 Directive remains in effect for the duration of the emergency. Interested individuals may apply at covidrelief.mt.gov.

- All Directives set to expire at the end of the emergency retain their effective date and terms, including, for example, Directives providing for increased access to telehealth and telemedicine services and coverage, except to the limited extent their provisions are in conflict with the terms of this Directive.

Guidance Applicable to All Phases

- Individuals should continue to practice good hygiene by adhering the following guidelines:
 - Wash your hands with soap and water or use hand sanitizer, especially after touching frequently used items or surfaces.
 - Avoid touching your face.
 - Sneeze or cough into a tissue or the inside of your elbow.
 - Disinfect frequently used items and surfaces as much as possible.
 - Strongly consider using non-medical face coverings while in public, especially in circumstances that do not readily allow for appropriate physical distancing (*e.g.*, grocery/retail stores, pharmacies, public transportation).

- People who feel sick should stay at home.
 - Do not go to work or school.
 - Contact and follow the advice of your medical provider.
 - Follow local health department guidance on isolation and quarantine.

- Employers should:
 - Develop and implement appropriate policies, in accordance with federal, state, and local regulations and guidance, and informed by industry best practices, regarding:
 - Social distancing and protective equipment.
 - Temperature checks and/or symptom screening.
 - Testing, isolating, and contact tracing, in collaboration with public health authorities.

- Sanitation.
- Use and disinfection of common and high-traffic areas.
- Monitor workforce for indicative symptoms. Do not allow people with symptoms of COVID-19 to work.
- Collaborate with public health officials when implementing policies and procedures for workforce contact tracing following an employee's COVID-19 positive test result.
- Encourage voluntary participation of employees in any surveillance testing designed to provide community-wide early warning by local public health officials.

Phase Two: Increase in Permissible Group Size to Groups of 50

- Effective June 1, avoid gathering in groups of more than 50 people in circumstances that do not readily allow for appropriate physical distancing. It is recommended to continue to social distance in gatherings of any size.
- Groups larger than 50 people should be cancelled unless physical distancing can be maintained.
- If you are planning an event with more than 50 people you should consult with your local public health office on a plan to implement adequate social distancing.
- Consistent with the Centers for Disease Control and Prevention's (CDC) guidelines, event cutoff threshold is at the discretion of community leadership based on current circumstances in your community.
- Physical distancing guidelines for groups and gatherings do not apply to household members.

Phase Two: Individuals and Employers

- Effective June 1, the below guidelines apply to both individuals and businesses in Phase Two. Individuals and businesses should also follow the Phase Two guidelines provided in the attached Appendix A, also in effect June 1.
- Vulnerable individuals should continue to adhere to the stay-at-home guidance.
- All businesses may operate, provided they adhere to physical distancing and the conditions in this Directive, the Phase Two Guidelines, and all other Directives and guidance remaining in effect. Businesses should follow CDC sanitation protocols.
- Restaurants, bars, breweries, distilleries and casinos remain in the same operational status as Phase One, but with an increase to 75 percent capacity.
- Gyms, indoor group fitness classes, pools, and hot tubs can operate at 75 percent capacity and only if they can adhere to strict physical distancing and they exercise frequent sanitation protocols.
- Concert halls, bowling alleys, and other places of assembly may operate with reduced capacity and must adhere to strict physical distancing guidelines set forth for group gatherings and follow CDC sanitation protocols.

- Child-care facilities can increase capacity consistent with the guidelines and FAQ contained in the April 1 Directive on childcare and if physical distancing guidelines can be implemented, however the 24-person cap per facility no longer applies effective June 1.
- Employers should continue to permit telework as much as possible and where feasible, but refer to guidelines for Phase One where telework is not possible.
- Senior living or assisted living facilities must continue to follow the guidelines of Phase One.
- Outdoor recreation remains in the same operational status as Phase One.

Phase Two: Travel Quarantine to Expire June 1

- Effective June 1, the provisions of the March 30 Directive requiring quarantine for non-work-related arrivals in Montana will no longer be in effect.
- The Montana National Guard remains authorized to conduct temperature checks, assess individuals for COVID-19 symptoms, and to inquire about exposure history of any traveler arriving in Montana from another state or country through air or rail travel, consistent with the terms and restrictions provided in the March 30 Directive.
- The State will execute a robust public health plan in communities most impacted by tourism, including:
 - Surveillance testing of employees.
 - Enhanced contact tracing resources deployed to these areas as requested by local authorities.
 - Ability to surge personal protective equipment to impacted health care systems.
 - Guidelines for operation for businesses that see high-tourist activity.

Directive Is Public Health Order and Enforceable By County Attorney

- This Directive, along with any prior Directive that implements and references the public health authorities of the Department of Public Health and Human Services (DPHHS) provided in Title 50, constitutes a “public health . . . order[]” within the meaning of § 50-1-103(2), MCA, and is enforceable by the Attorney General, DPHHS, a county attorney, or other local authorities under the direction of a county attorney.

Local Public Health Agencies to Assist in Administration of this Public Health Order

- Local public health agencies are directed to assist in the administration of this Directive, consistent with § 50-1-202(2)(a), MCA.

Less-Restrictive Local Ordinances Preempted

- This Directive is in effect statewide in Montana. In the interest of uniformity of laws and to prevent the spread of disease, all inconsistent emergency county health ordinances are preempted by this Directive, but only to the extent they are less restrictive.

Authorities: Sections 10-3-103, -104, -302, and -305, MCA; §§ 50-1-202, -203, and -204, MCA; 37 A.G. Op. 132 (1978); Executive Orders 2-2020 and 3-2020; Montana Constitution, Art. VI, Sections 4 and 13; and all other applicable provisions of state and federal law.

Limitations

- This Directive is effective immediately and expires at the end of the emergency, except where specified.
- This Directive shall be implemented consistent with applicable law and subject to the availability of appropriations.
- Nothing in this Directive shall be construed to limit, modify, or otherwise affect the authority granted by law to the Governor, any department, agency, political subdivision, officer, agent, or employee of the State of Montana except as expressly provided in this Directive or other Directives now in effect implementing Executive Orders 2-2020 and 3-2020.
- If any provision of this Directive or its application to any person or circumstance is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Directive, which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Directive are declared to be severable.
- This Directive is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the State of Montana, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



School Reopening Considerations

CLEANING AND SANITATION

- Frequent disinfecting of door handles, desks and other common spaces.
- Require handwashing in regular intervals.
- Keep libraries, gyms, and playgrounds off limits unless they can be sanitized between groups.
- Provide hand sanitizer.

SICK POLICIES

- Implement temperature checks and / or symptom screening when practical.
- Require anyone (students or staff) with COVID-19 symptoms to stay home.

LIMIT CLASS SIZES

- Consider breaking larger classes into smaller groups.
- Students may alternate school days or attend for half days.



School Reopening Considerations Continued

MAINTAIN SOCIAL DISTANCE

- Consider use of face coverings by all staff and students
- Keep students with the same group and in the same classroom, with teachers rotating when practical.
- Consider students eating lunch in the classroom to help limit mixing of students.
- Cancel extracurricular activities.
- Prevent any non-school staff, including parents, from entering school buildings.
- Consider reducing bus loads to allow for one student per seat.

GRADUATION CEREMONIES

- Provide a live stream of graduation
- Consider limiting spectator attendance
- For larger schools, consider grouping graduates or providing multiple ceremonies
- Follow social distancing between families



School Reopening Considerations Continued

ACCOMODATIONS for students, teachers, and staff in an at-risk group:

- Schools that reopen will need to take into consideration that some teachers and staff will fall into the at-risk category because of their age or other health risks. These individuals should have additional accommodations including: teaching classes remotely, utilizing a larger classroom where social distancing can be maintained, or given an option not to return until the risks are reduced.
- Students who are high risk or who have family members who are high risk should not be penalized for failing to attend and should continue to receive remote support.
- Accommodations should also be extended to students and staff who are required to quarantine due to exposure or potential exposure.

CONFIRMED or **SUSPECTED** case of COVID-19

- Collaborate with public health to ensure each school has a plan for reporting, contact tracing and both short-term or extended closures in the case of a positive COVID case related to the school or community.
- Utilize CDC guidelines <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/guidance-for-schools.html>



General Business Reopening Guidelines

PHASE ONE: ALL SETTINGS

- Health assessments must be conducted for all employees at the beginning of each shift.
- In establishments where customers wait in a line, non-household customers should remain physically distanced.
- Waiting areas where adequate physical distancing cannot be maintained must be closed.
 - Customers should be encouraged to call for a reservation or an appointment, or establishments should use an online wait listing application.
- Physical distancing of 6 feet must be maintained between non-congregate customers, this may require:
 - A reduction in capacity;
 - A reduction of seating in service and waiting areas;
 - Management of waiting areas and waiting lines; or
 - Systems that reduce the amount of contact time between customers and staff.



General Business Reopening Guidelines Continued

PHASE TWO: ALL SETTINGS

- Non-congregate group size has increased from 10 people to 50 people.
- All other provisions remain the same as Phase One for general business operations.

PHASE THREE: ALL SETTINGS

- Return to normal operations.



Restaurant / Bar / Brewery / Distillery / Casino Guidelines

ALL PHASES

- A specific cleaning plan must be implemented, and employees must be trained in proper sanitation practices. Materials will be available on the Montana Department of Public Health and Human Services (DPHHS) food and consumer services website.
- All surfaces occupied must be cleaned between customers, including tables, chairs, booths, and highchairs.
- Table items including, condiments, menus, napkins, and décor, should be removed from the table unless they can be adequately cleaned between customers.
- Menus must be cleaned between customers.
- Growlers and refillable or reusable containers must be cleaned prior to being refilled.
- Gaming machines must be adequately cleaned between customers.



Restaurant / Bar / Brewery / Distillery / Casino Guidelines Continued

PHASE ONE: RESTAURANTS

- Capacity must be limited to 50% of normal operating capacity to allow for adequate group spacing.
- Tables must be limited to six people per table.
- Establishments must provide for 6 feet of physical distancing between groups and or tables by:
 - Increasing table spacing, removing tables, or marking tables as closed;
 - Providing for a physical barrier between tables; or
 - Back-to-back booth seating provides adequate separation.
- In-house dining for quick service restaurants should remain closed, if all guidelines can't be met, including the cleaning of every table between customers.
- Sitting or standing at bars or counters is not allowed.
- In bars, drinks and food must be served to customers at a table.



Restaurant / Bar / Brewery / Distillery / Casino Guidelines Continued

PHASE ONE: RESTAURANTS CONTINUED

- Self-service buffets must be closed.
- Drink refills are not allowed.
- Self-service cups, straws and lids should be behind a counter and handed to customers
- Self-service condiments should be eliminated.
- Gaming machines that are operational must be separated by 7-foot center to center. Machines must be placed out of service if adequate spacing cannot be assured.



Restaurant / Bar / Brewery / Distillery / Casino Guidelines Continued

PHASE TWO: RESTAURANTS

- Capacity may be increased to 75% of normal operating capacity.
- Tables must be limited to 10 people per table.
- Establishments must continue provide for physical distancing between groups and or tables but may increase capacity.
- In-house dining for quick service restaurants should remain closed if all guidelines can't be met, including the cleaning of every table between customers.

PHASE THREE: RESTAURANTS

- Continue to practice social distancing when practical.
- Establishments should begin to resume normal occupancy while continuing to follow the guidelines for all facilities.



Outdoor Recreation Guidelines

PHASE ONE AND TWO: RECREATION GUIDELINES

- Public lands, fishing access sites, and parks are encouraged to continue to provide outdoor recreation opportunities for local and regional users provided that users can adhere to strict social distancing guidelines and facilities follow frequent sanitizing protocols. Areas that cannot practicably implement social distancing requirements or sanitation needs will remain closed. Limited campground offerings, group-use facilities and playgrounds, may be opened at the discretion of local and state managers. Local, state and federal officials are strongly encouraged to coordinate on all reopening decisions. Guides and outfitters may offer services consistent with any ongoing quarantine travel restrictions provided they adhere to social distancing guidelines and sanitation protocols. Visitors should check the status of any closures and restrictions before traveling.

PHASE THREE: RECREATION GUIDELINES

- Campground, group-use facilities, playgrounds and visitor centers are fully open.



Personal Care / Services Guidelines

PHASE ONE: PERSONAL CARE (SALONS, MASSAGE, BODY ART, ETC.)

- Operations that require close personal contact for an extended period result in exposing staff and customers to greater levels of risk. These situations require additional safety and health precautions.
- Screen customers prior to appointment for symptoms of fever, shortness of breath or a cough. Customers that have any of these symptoms must be rescheduled.
- Utilize a face mask for staff and for customers when practical.
- Stylist / artist / service-provider and customer would be a “station” that would be 6 feet away from other “stations”.
- Provide for 6 feet of physical distancing between stations, this may require:
 - A reduction in capacity;
 - Increasing spacing, removing stations, or marking stations as closed;
 - Providing for a physical barrier between stations;
 - A reduction of seating in service and waiting areas; or
 - Systems that reduce the amount of contact time between customers and staff.



Personal Care / Services Guidelines Continued

PHASE TWO: PERSONAL CARE (SALONS, MASSAGE, BODY ART)

- Establishments should continue provide for physical distancing between stations.

PHASE THREE: PERSONAL CARE (SALONS, MASSAGE, BODY ART)

- Continue to practice physical distancing when practical.
- Establishments may resume normal occupancy while continuing to follow the guidelines for all facilities.

Appendix B

Phase Two Guidance for Pools at Licensed Public Accommodations (Hotels, Motels, Bed and Breakfasts, Tourist Homes, etcetera)

Public Accommodation Pools are allowed to operate with reduced capacity of 50% of normal bather load and basic compliance with social distancing requirements.

The CDC has indicated that properly maintained pool water inactivates the virus. It is critical that pools that have shut down during this time or reduced maintenance follow proper re-opening procedures and sampling of chemical parameters to ensure water is safe for use, prior to opening to the public. Operators should work with their Certified Pool Operator and/or local/state sanitarian if questions arise regarding re-opening.

If a facility has had a confirmed COVID-19 case they should follow the CDCs facility environmental cleaning procedures for deck areas, seating, locker rooms, and other areas of the establishment frequented by swimmers.

Public Accommodation Pools (Pools at Hotels, Motels, Bed and Breakfasts, Tourist Homes, etcetera):

- Front desk/gate attendant tracks occupancy, incoming and outgoing to ensure maximum occupancy does not exceed 75 percent capacity of normal bather load;
- Signage must be posted with the following or substantially similar wording. Signs shall be positioned for effective visual observation by hotel guests, such as on the entry way door:
 - “Hotel guests with fever, shortness of breath, a cough, or other COVID-19 symptoms must refrain from using the pool.”;
- No congregating in waiting areas, patrons should wait in an appropriately spaced line or way that observes social distancing;
- Locker rooms should remain closed, except for showering before and after swimming. Since only registered hotel guests are allowed to use the pool, individuals should change in their rooms;
- Social distancing should be applied in all common areas;
- 6 foot spacing between unassociated swimmers (i.e. not family members);
- 6 foot spacing between groups of no more than 10 (i.e. family groups and unrelated individuals must maintain 6 foot separation);
- Space deck tables and chairs to facilitate 6 foot spacing;
- Recommend, where possible, use buoys and floating pool ropes to mark off lanes or areas of pool for separation of large swimming areas;
- Recommend, where possible, marking stairs and walkways with directional arrows to keep in/out traffic separated.

Appendix B

Guidance for gyms and fitness studios

Gyms and fitness studios contribute to the health and wellness for many Montanans. As such, and in recognition of the continued progress toward recovery that Montana has made, beginning Friday, May 15, 2020 they will be allowed to operate at 75 percent capacity with sanitization and social distancing requirements met.

In the event a confirmed COVID-19 case is associated with a facility, the facility should be thoroughly cleaned in accordance with the CDC's facility environmental cleaning procedures for workout areas, seating, locker rooms, and other areas of the establishment frequented by patrons.

- Facility must have a dedicated staff available during operating hours to wipe down frequently touched areas on a regular basis and monitor gym zones to ensure that users are wiping down equipment properly.
- Train workers on symptom awareness and proper handwashing technique.
- Signage must be posted with the following or substantially similar wording:
 - “Patrons with fever, shortness of breath, a cough, or other COVID-19 symptoms must refrain from using the gym”
 - Signs shall be positioned for effective visual observation by gym guests, such as at the front desk and in locker rooms.
- Front desk should track occupancy to ensure facilities stay at or below 50 percent capacity.
- Hand sanitizer must be made available at front desk and at stations throughout the workout area.
- Approved sanitizer for cleaning equipment after use must be provided at stations throughout the workout areas along with disposable towels. Reusable towels shall not be used to clean equipment.
- Post signs throughout workout area reminding patrons to wipe equipment after each use.
- Masks should be worn by all staff.
- Masks are encouraged to be worn by guests when possible.
- Six-foot distance should be maintained between equipment. Cardio studios should limit guests to every other piece of equipment to achieve this.

Appendix B

- Guest using free weights shall maintain six feet of separation except when a spotter is necessary. In this instance, workout groups shall be limited to two people.
- Sitting areas must be closed for use.
- Food vendors must follow applicable COVID-19 procedures for restaurants and retail food service. Vendors should be encouraged to use single-service items whenever possible, especially for condiments and similar foods.
- Social distancing must be maintained in dressing rooms and other common areas. No congregating in these areas may be allowed.
- After closing, establishments must clean using an EPA approved disinfectant. Twenty-four-hour establishments must close from 11:30 pm to 12am so that proper disinfection can happen.
 - Facility must develop a checklist to ensure that no equipment is being missed during disinfection. Checklist should include large items, such as treadmills and smaller items, such as weights and bands.
- Frequently touched surfaces must be cleaned and sanitized regularly throughout the day and disinfected each night after closing.
- Personal training sessions may be offered with strict adherence to social distancing guidelines and masks are encouraged to be used by the trainer and trainee.
- Indoor group classes may be offered.
- Additional time between group classes must be provided so that a designated gym employee can disinfect any equipment and other cleanable surfaces before the next class begins.

Guidance for Pools at Gyms

Gym pools are allowed to operate with reduced capacity of 75 percent of normal bather load and basic compliance with social distancing requirements.

The CDC has indicated that properly maintained pool water inactivates the virus. It is critical pools that have shut down during this time or reduced maintenance follow proper re-opening procedures and sampling of chemical parameters to ensure water is safe for use, prior to opening to the public. Operators should work with their Certified Pool Operator and/or local/state sanitarian if questions arise regarding re-opening.

Appendix B

In the event a confirmed COVID-19 case is associated with a facility the facility should clean in accordance with CDC's facility environmental cleaning procedures for workout areas, seating, locker rooms, and other areas of the establishment frequented by swimmers.

Gym Pools:

- Only registered members can use the facility, no day passes or walk-ins
- Train workers on symptom awareness and proper handwashing procedures
- Pool classes may continue; if:
 - All social distancing requirements must be observed during class; and
 - Any equipment used can be easily cleaned and disinfected between users.
- Youth swim lessons may be offered in-line with previous guidance for Phase 1, which includes youth activities should avoid gathering in groups of more than 10 people in circumstances that do not readily allow for appropriate physical distancing.
- Front desk/gate attendant tracks occupancy, incoming and outgoing to ensure maximum occupancy does not exceed 75 percent capacity of normal bather load;
- Signage must be posted with the following or substantially similar wording.
 - “Members with fever, shortness of breath, a cough, or other COVID-19 symptoms must refrain from using this facility.”
 - Signs shall be positioned for effective visual observation by members, such as on the entry way door
- No congregating in waiting areas, patrons should wait in an appropriately spaced line or way that observes social distancing
- Locker rooms should be monitored by a designated staff member to ensure they are not becoming crowded and that social distancing is being observed
- Signage must be posted on the locker room door with the following or substantially similar wording, “Observe social distancing while using this facility. No loitering in common areas.”
- Social distancing should be applied in all common areas
- 6-foot spacing between unassociated members (i.e. not family members) in the pool.
- 6-foot spacing between groups of no more than 10 (i.e. family groups and unrelated individuals must maintain 6-foot separation) in the pool.
- Space pool deck tables and chairs to facilitate a 6-foot distance.

Appendix B

- Recommend, where possible, use of buoys and floating pool ropes to mark off lanes or areas of pool for separation of large swimming areas.
- Recommend, where possible, marking stairs and walkways with directional arrows to keep in/out traffic separated.

Guidance for places of assembly, i.e. indoor and outdoor concert venues, bowling alleys, etc.

- In the event a confirmed COVID-19 case is associated with a facility the facility should clean in accordance with CDC's facility environmental cleaning procedures for areas of the establishment frequented by patrons.
- Maximum number of attendees is 75 percent of normal capacity while maintaining 6 feet between non-family member groups.
- Signage must be posted with the following or substantially similar wording:
 - "Patrons with fever, shortness of breath, a cough, or other COVID-19 symptoms must refrain from using this facility."
 - Signs shall be positioned for effective visual observation by patrons, such as on the entry way door.
- Increase cleaning and sanitizing of frequently touched surfaces, including door handles, chairs and tables.
- Keep social distancing of at least 6 feet between non-family member groups or immediate party.
- Food vendors must follow applicable COVID-19 procedures for restaurants and retail food service. Vendors should be encouraged to use single-service items whenever possible, especially for condiments and similar foods.
- Facilities should try to control customer flow in a manner that maximizes social distancing such as signage or ropes and directing flow in one direction.
- Provide hand sanitizer or hand washing stations throughout the venue whenever possible.
- Each venue should create and implement a written COVID-19 response plan.
- Increase cleaning and sanitizing of restrooms to no less than every two hours whenever possible.

Appendix B

- Provide clear plastic shielding between workers and attendees whenever possible, such as event cashiers and food vendors.
- If possible do not use tables. Tables should be covered with single-use material and discarded between users, showings, performances or every two hours, whichever provides maximum spread protection.
- Train workers on COVID-19 symptom awareness and proper handwashing procedures.
- Gift shops should limit entry to 75 percent capacity and clean commonly touched surfaces frequently.
-

Additional measures that apply to theaters (live and movie)

- Increase cleaning time period between events, performances and showings. Ensure that commonly touched surfaces such as arm rests and railings are cleaned frequently.
- Ushers should monitor and enforce social distancing practices in theaters and encourage additional distance between guests as appropriate.
 - Ushers should limit the number of people in lines to no less than 6 feet between families or immediate party.

OFFICE OF THE GOVERNOR
STATE OF MONTANA

STEVE BULLOCK
GOVERNOR



MIKE COONEY
LT. GOVERNOR

TO: Montanans; all officers and agencies of the State of Montana
FROM: Governor Steve Bullock
DATE: July 15, 2020
RE: Directive implementing Executive Orders 2-2020 and 3-2020 and providing for the mandatory use of face coverings in certain settings

Executive Orders 2-2020 and 3-2020 declare that a state of emergency exists in Montana due to the global outbreak of COVID-19 Novel Coronavirus.

The legislature has delegated to the Governor authority to respond to emergencies. During a declared state of emergency, the Governor may “control ingress and egress to and from an incident or emergency or disaster area, the movement of persons within the area, and the occupancy of premises within the area.” Section 10-3-104(2)(c), MCA. In responding to the emergency, the Governor “shall use the services and facilities of the existing officers and agencies of the state, and all officers and agencies shall cooperate with and extend their services and facilities to the governor as the governor may request in the carrying out of the purposes of” the emergency response statutes. Section 10-3-305(2).

In addition, the Department of Public Health and Human Services (DPHHS or Department), acting under the Governor’s direction, may “issue written orders for correction” of “conditions of public health importance” through measures including “isolation and quarantine” and “abatement of public health nuisances.” Section 50-1-202, MCA. A condition of public health importance includes any “disease . . . that is identifiable on an individual or community level and that can reasonably be expected to lead to adverse health effects in the community.” Section 50-1-101(2), MCA. The Department, under the Governor’s direction, may take action to correct public health deficiencies in “buildings or facilities where persons assemble.” Section 50-1-203, MCA. The Department, under the Governor’s direction, may also impose quarantine and isolation measures to protect public health. Section 50-1-204, MCA. Montana law provides that these authorities will be utilized to respond to an “outbreak of disease,” § 10-3-103(4), MCA, and to “limit the transmission of the communicable disease,” *see, e.g.*, § 50-1-101(6), MCA.

COVID-19 is an easily transmissible, potentially fatal respiratory illness that spreads in the air through droplets from infected persons. COVID-19 is transmissible even by individuals who are not currently showing symptoms of the disease and who do not know they are infected. Use of a fabric covering over the mouth and nose, however, is an effective means of limiting the potential for transmission to others by both symptomatic and asymptomatic individuals infected with the virus. Recent research suggests that universal use of face coverings in enclosed public spaces would substantially reduce the spread of COVID-19. A recent economic analysis from Goldman Sachs found universal face covering usage to be a potentially effective substitute for business closures. Based on these considerations, many major retailers and state and local governments have recently adopted measures to encourage or

mandate the use of face coverings.

COVID-19 has led to a once-in-a-century pandemic. More than 3.2 million Americans have been infected, and more than 135,000 have died. In the last month, active cases in Montana have risen from 55 to over 1,000. Too many Montanans continue to congregate in large gatherings where a single person can spread COVID-19 to many others; and too few are wearing face coverings in public settings. Inability to control the spread of COVID-19 endangers vulnerable Montanans, businesses who want to keep their doors open, and hospitals who need the capacity to treat both COVID-19 patients and all others needing medical care.

My first duty is to ensure the health and wellbeing of all Montanans. Epidemics of dangerous diseases have been a threat to Americans throughout history. As a result, since the earliest days of this nation, the United States Supreme Court and Montana Supreme Court have recognized the State's authority to impose quarantines, mandatory vaccination orders, and other public health measures to prevent the spread of contagion. Compared to these measures, the use of face coverings is a modest imposition that can do a great deal to keep Montanans safe and Montana businesses open. Accordingly, I have determined that, in response to the emergency, it is necessary to require face coverings in certain settings to prevent the spread of communicable disease in counties currently experiencing four or more active cases. I strongly encourage Montanans in counties with fewer than four cases to wear face coverings as well.

Therefore, in accordance with the authority vested in me under the Constitution, Article VI, Sections 4 and 13, and the laws of the State of Montana, Title 10, Chapter 3 and Title 50, Chapter 1, MCA, and other applicable provisions of the Constitution and Montana law, I hereby direct the following measures be in place in the State of Montana, effective immediately:

1. Definitions

As used in this Directive, the following terms have the following meanings:

- “Business” means any for-profit or non-profit entity which has employees or volunteers. The term “business” includes, but is not limited to, retail stores, grocery stores, food and beverage establishments, public lodging, personal care providers, medical providers, pharmacies, gyms, pools, fitness services, museums and theaters, indoor recreational or entertainment facilities, gas stations, repair and service providers, non-profit organizations, realty services, legal services, transportation services, and ride sharing services.
- “Government office” means any office of any department, agency, or political subdivision of the State of Montana.
- “Face covering” means a fabric, paper, or disposable face covering that covers the nose and mouth and which does not have an exhalation valve. The term “face covering” includes face shields.
- “Indoor space open to the public” means any indoor space, whether publicly or privately owned, where the public has access by right or invitation, express or implied, whether by payment of money or not. In addition, “indoor spaces open to the public” include, but are not limited to,

lobbies, common areas, elevators, bathrooms, meeting rooms, or other spaces where people gather. The term includes all modes of public or commercial transportation. The term does not include private residences not open to the public.

- “Organized outdoor activity” means any gathering of 50 or more people for an activity or event organized or sponsored by a business or person, or that takes place on the property of a business or person. This includes, but is not limited to, outdoor theatrical or music performances, fairs, markets, festivals, parades, carnivals, rodeos, sporting or athletic events, beer gardens, weddings and receptions, or parties.
- “Sponsor” means any business or person who organizes or sponsors an organized outdoor activity, or who allows the activity to take place on their property.

2. Face Covering Requirement in Indoor Spaces Open to the Public.

- Except as provided in section 4 of this Directive, all businesses, government offices, or other persons responsible for indoor spaces open to the public shall require and take reasonable measures to ensure that all employees, contractors, volunteers, customers, or other members of the public wear a face covering that covers their mouth and nose at all times while entering or remaining in any indoor spaces open to the public.
 - Face coverings shall be provided for all employees and volunteers.
 - All points of entry open to the public shall have a clearly visible sign posted stating: “Mask or face covering use required for ages five and older.”
- The provisions of this Directive apply only to counties in which there are four or more confirmed and active COVID-19 cases, and only during the time in which there are four or more active cases. However, Montanans in counties with three or fewer active cases are strongly encouraged to wear face coverings.

3. Face Covering Requirements for Certain Organized Outdoor Activities

- Except as provided in section 4 of the Directive, for any organized outdoor activity where social distancing is not possible or is not observed, sponsors shall require and take reasonable measures to ensure that all persons attending an organized outdoor activity wear a face covering that covers their mouth and nose at all times.
- This section applies only where the nature of the organized outdoor activity makes it impracticable for all attendees to maintain at least six feet of physical distance from each other, or any organized outdoor activity where attendees are not observing at least six feet of physical distance from others.
- At all outdoor gatherings of 50 or more people, whether or not it constitutes an organized outdoor activities, all individuals except those covered by section 4 of this Directive are required to wear face coverings while in attendance where it is impracticable to maintain six feet of physical distance at all times, or whether attendees are not observing at least six feet of physical distance from others.

- The provisions of this Directive apply only to counties in which there are four or more confirmed and active COVID-19 cases, and only during the time in which there are four or more active cases. However, Montanans in counties with three or fewer active cases are strongly encouraged to wear face coverings.

4. Exceptions

- Businesses, government offices, other persons responsible for indoor spaces open to the public, and sponsors of organized outdoor activities are not required to ensure the following individuals wear face coverings:
 - children under the age of five. All children between the ages of two and four, however, are strongly encouraged to wear a face covering in accordance with the provisions of this Directive. Children under the age of two should not wear a face covering;
 - persons consuming food or drinks in an establishment that offers food or drinks for sale;
 - persons engaged in an activity that makes wearing a face covering impractical or unsafe, such as strenuous physical exercise or swimming;
 - persons seeking to communicate with someone who is hearing impaired;
 - persons giving a speech or engaging in an artistic, cultural, musical, or theatrical performance for an audience, provided the audience is separated by at least six feet of distance;
 - persons temporarily removing their face covering for identification purposes;
 - persons required to remove face coverings for the purpose of receiving medical evaluation, diagnosis, or treatment; or
 - persons who have a medical condition precluding the safe wearing of a face covering.
- Businesses, government offices, persons responsible for indoor spaces open to the public, and sponsors of organized outdoor activities should afford accommodations from the provisions of this Directive to those who are entitled an accommodation under federal and state disability protection laws, including the Americans with Disabilities Act (ADA) and the Montana Human Rights Act, labor laws, or any other applicable law requiring accommodations in public accommodations.
- Only those employees, volunteers, and contractors in public-facing work spaces are required to wear face coverings as specified in this Directive.

5. Enforcement

- This Directive, along with any prior Directive that implements and references the public health authorities of the Department of Public Health and Human Services (DPHHS) provided in Title 50, constitutes a “public health . . . order[.]” within the meaning of § 50-1-103(2), MCA, and is enforceable by the Attorney General, DPHHS, a county attorney, or other local authorities under the direction of a county attorney.
- Local public health agencies are directed to assist in the administration of this Directive, consistent with § 50-1-202(2)(a), MCA. All officers and agencies of the state are directed to assist in the administration and enforcement of this Directive, consistent with § 10-3-305(2), MCA.

- This Directive is enforceable only against businesses and other persons who are responsible for indoor spaces open to the public, or sponsors of organized outdoor activities as defined in this Directive.
- Local public health agencies and law enforcement should focus their enforcement of this Directive on education, providing warnings and education about the risk of transmission, while reserving the imposition of penalties, trespass enforcement, and other formal enforcement mechanisms for only the most egregious, repeat violations that put the public at risk.
- Businesses, other persons responsible for indoor spaces open to the public, and sponsors of organized outdoor activities may deny entry, refuse service, or ask to leave any person, except those provided for in section 4 of this Directive, who refuse to wear a face covering. If such a person refuses to wear a face covering and refuses to leave the premises, a peace officer may enforce the State's trespassing laws and any other laws the person may violate.
- Businesses, other persons responsible for indoor spaces open to the public, and sponsors of organized outdoor activities are entitled to reasonably rely in good faith on the representations of employees, volunteers, contractors, customers, visitors, or members of the public regarding the applicability of the exceptions in section 4 of this Directive. Reasonable, good faith reliance on such representations is an affirmative and complete defense to any enforcement proceedings brought pursuant to this Directive.

6. Applicability

- In the interest of uniformity of laws and to prevent the spread of disease, all inconsistent local government health ordinances or orders are preempted by this Directive, but only to the extent they are less restrictive. Counties, cities, and towns may adopt more restrictive ordinances.
- To the limited extent any previous Directives are in direct conflict with the provisions of this Directive, they are superseded. Otherwise, all prior Directives remain in full force and effect.

Authorities: Sections 10-3-104, -103, -302, and -305, MCA; §§ 50-1-202, -101, -203, and -204, MCA; Executive Orders 2-2020 and 3-2020; Montana Constitution, Art. VI, Sections 4 and 13; and all other applicable provisions of state and federal law.

Limitations

- This Directive is effective immediately and expires at the end of the declared state of emergency in Executive Orders 2-2020 and 3-2020.
- This Directive shall be implemented consistent with applicable law and subject to the availability of appropriations.
- If any provision of this Directive or its application to any person or circumstance is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Directive, which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Directive are declared to be severable.
- Nothing in this Directive shall be construed to limit, modify, or otherwise affect the authority

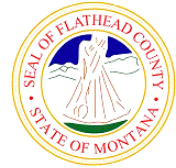
granted by law to the Governor or any department, agency, political subdivision, officer, agent, or employee of the State of Montana, except as provided in this Directive or other Directives now in effect implementing Executive Orders 2-2020 and 3-2020.

- This Directive is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the State of Montana, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Flathead County
Board of Commissioners

(406) 758-5503

Randy Brodehl
Pamela Holmquist
Philip Mitchell



FOR IMMEDIATE RELEASE

Yesterday, the governor of Montana spoke about Flathead and Yellowstone County officials saying that they are not doing enough to implement his directive and the Flathead County Commissioners are concerned that this needs to be clarified. The governor's directive was to health officials and the county attorneys, not the commissioners. The commissioners do not have legal grounds to mandate masks or other health mandates. Instead, we support the Constitutional rights of Montanans to make choices about personal protection for themselves and their families. We also support the rights of businesses to protect their employees and patrons and recommend that they follow the guidelines provided by the Flathead Public Health Officer. The Public Health Officer and the Health Department have been working diligently to provide direction to our business community. Commissioner Brodehl said, "Whether you choose to mask up, or make a different choice should belong to our citizens, not the governor". We recommend citizens choose who they patronize and what protections they use for themselves. At the same time we respect and support the rights of businesses to make good decisions about how they should operate for the safety of their employees, patrons, and their success as a business. Our citizens can then make decisions about who and how they will patronize our local businesses. Commissioner Mitchell said, "The commissioners thank all of the Health Community for their commitment to meet the needs of our community as we work through these tough times."

If you would like any further information, please contact the Flathead County Commissioners office at (406) 758-5503.



Flathead City-County Health Department

1035 First Ave. West Kalispell, MT 59901
(406) 751-8101 FAX 751-8102
www.flatheadhealth.org

Community Health Services
Environmental Health Services
751-8130 FAX 751-8131
Family Planning Services
751-8150 FAX 751-8151
Home Health Services
751-6800 FAX 751-6807
WIC Services
751-8170 FAX 751-8171
Animal Shelter
752-1310 FAX 752-1546

For immediate release:

October 13, 2020

Kalispell, MT –COVID-19 cases in Flathead County continue to surge at an alarming rate, putting strain on public health investigation staff. Case investigation staff of the Flathead City-County Health Department (FCCHD) are working diligently 7 days a week to complete case investigations and notify close contacts, but due to high case numbers FCCHD is currently unable to complete case investigations of positive COVID-19 cases within 24 hours.

All individuals who receive a positive COVID-19 test result should stay home for 10 days. Close contacts, people who are exposed to a positive case, should self-quarantine at home for 14 days since their last exposure. Instructions on how to quarantine, how to monitor symptoms and prevent the spread of COVID-19 can be found on the Flathead City-County Health Department website. Go to <https://flatheadhealth.org/close-contact-information/> and click on these documents:

- Potential COVID-19 Exposure Handout
- Information for Household Members of Close Contacts
- Caring for Someone Who Has Tested Positive for COVID-19

A log for monitoring symptoms, guidelines for cleaning and disinfecting, as well as other information from the CDC can be found at these links:

- [Cleaning and disinfecting for households](#)
- [Symptom Log](#)
- [Get the Facts about Coronavirus](#)

Any person who is exhibiting symptoms and would like to receive COVID-19 testing should contact their healthcare provider.

“Our staff is working hard to investigate cases as quickly and efficiently as we can, but our caseload is increasing by the day,” says Tamalee St. James Robinson, Interim Health Officer of the Flathead City-County Health Department. “If you receive a positive test result, please stay home for 10 days, you will receive a call from an FCCHD staff member as soon as we can. We appreciate your patience during this time.”

In response to the high volume of positive cases, the Flathead County Board of Health will be voting on COVID-19 Community Control measures at their monthly meeting on October 15th. For



more information about the upcoming meeting, please visit <https://flatheadhealth.org/administration/>.

Due to the large workload and strained capacity of FCCHD staff, media questions cannot be accommodated before October 15th. “We are pulling in as many staff members as we can to handle this surge of cases,” states Robinson. “It’s all hands on deck to mitigate further spread of COVID-19 in our community.”

Flathead County has received 186 new cases in the past 3 days, and to date, there has been twenty three COVID-19 related deaths in Flathead County. For more information about COVID-19, please visit <https://flatheadhealth.org/novel-coronavirus-covid-19/>.





