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8 and SCOTT MORROW

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 OAKLAND DIVISION
12

13 JANICE ALTMAN, et al.

14 Plaintiff,

15 v.

16 SANTA CLARA COUNTY, et al.,

17 Defendants
18
19

Case No. 20-cv-02180-JST

**DEFENDANT COUNTY OF SAN MATEO'S
REQUEST FOR JUDICIAL NOTICE OF
ISSUANCE OF REVISED HEALTH
OFFICER ORDER**

Date: May 20, 2020
Time: 2:00 p.m.
Dept: Courtroom 6 – 2nd Floor
1301 Clay Street, Oakland, CA 94612
Before: Honorable Jon S. Tigar

1 Pursuant to Federal Rule of Evidence 201, Defendant County of San Mateo requests that the Court
2 take judicial notice of the County of San Mateo’s revised Public Health Order, issued on May 29, 2020
3 and generally effective June 1, 2020. This Order is judicially noticeable because it is “capable of accurate
4 and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” Fed. R.
5 Evid. 201(b). The Order supersedes prior versions of the County’s Public Health Orders and permits all
6 retail stores to sell goods through both in-store shopping and curbside/outdoor pickup or delivery, under
7 the social distancing requirements described in the Order.

8 **Exhibit A** consists of a true and correct copy of San Mateo County’s May 29, 2020 Order and
9 Appendix C-1 thereto. *See* Ex. A ¶¶ 5, 11-12 (allowing “Additional Businesses” to operate); *id.* ¶ 15.n
10 (defining “Additional Businesses” as entities identified in Appendix C-1); *id.* at Appendix C-1 (stating that
11 “retail stores” including “indoor and outdoor shopping malls” may resume operation, though “[r]etail stores
12 providing in-store shopping must, in the required health and safety plan, identify the number of shoppers
13 (a number which must be no greater than any set by the State of California) that can be accommodated, in
14 a manner that ensures that shoppers and personnel can maintain social distancing and put in place measures
15 to enforce that limit”). The full order and appendices may be found at:
16 <https://www.smchealth.org/post/health-officer-statements-and-orders>.

17
18 Dated: May 29, 2020

Respectfully submitted,

19 JOHN C. BEIERS, COUNTY COUNSEL

20
21 By: /s/ Daniel McCloskey
22 Daniel McCloskey, Deputy
23 Sarah Trela, Deputy

24 Attorneys for Defendants County of San Mateo,
25 Carlos Bolanos and Scott Morrow

EXHIBIT A



SAN MATEO COUNTY HEALTH
**PUBLIC HEALTH,
POLICY & PLANNING**

Dr. Scott Morrow, Health Officer
Cassius Lockett, PhD, Director

Public Health, Policy & Planning
225 37th Avenue
San Mateo, CA 94403
smchealth.org

**ORDER No. c19-5e (REVISED) OF THE HEALTH OFFICER
OF THE COUNTY OF SAN MATEO DIRECTING**

ALL INDIVIDUALS IN THE COUNTY TO CONTINUE SHELTERING AT THEIR PLACE OF RESIDENCE EXCEPT FOR IDENTIFIED NEEDS AND ACTIVITIES, IN COMPLIANCE WITH SPECIFIED REQUIREMENTS; CONTINUING TO EXEMPT HOMELESS INDIVIDUALS FROM THE ORDER BUT URGING GOVERNMENT AGENCIES TO PROVIDE THEM SHELTER; REQUIRING ALL BUSINESSES AND RECREATION FACILITIES THAT ARE ALLOWED TO OPERATE TO IMPLEMENT SOCIAL DISTANCING, FACE COVERING, AND CLEANING PROTOCOLS; AND DIRECTING ALL BUSINESSES, FACILITY OPERATORS, AND GOVERNMENTAL AGENCIES TO CONTINUE THE TEMPORARY CLOSURE OF ALL OTHER OPERATIONS NOT ALLOWED UNDER THIS ORDER

DATE OF ORDER: MAY 28, 2020

Please read this Order carefully. Violation of or failure to comply with this Order is a misdemeanor punishable by fine, imprisonment, or both. (California Health and Safety Code § 120295, *et seq.*; Cal. Penal Code §§ 69, 148(a)(1))

UNDER THE AUTHORITY OF CALIFORNIA HEALTH AND SAFETY CODE SECTIONS 101040, 101085, AND 120175, THE HEALTH OFFICER OF THE COUNTY OF SAN MATEO (“HEALTH OFFICER”) ORDERS:

1. This Order supersedes the May 15, 2020 Order of the Health Officer directing all individuals to shelter in place (“Prior Order”). This Order amends, clarifies, and continues certain terms of the Prior Order to ensure continued social distancing and limit person-to-person contact to reduce the rate of transmission of Novel Coronavirus Disease 2019 (“COVID-19”). This Order continues to restrict most activity, travel, and governmental and business functions to essential needs, Outdoor Activities, Additional Activities, Outdoor Businesses, and Additional Businesses that the Prior Orders allowed to resume. But in light of progress achieved in slowing the spread of COVID-19 in the County of San Mateo (the “County”) and neighboring counties and the guidance provided by the State of California, this Order allows a limited number of Additional Businesses and Additional Activities (as defined in Section 15 below and described in Appendix C-1 and C-2) to resume operating, subject to specified conditions and safety precautions to reduce associated risk of COVID-19 transmission. Additionally, limitation to beach access have been eliminated and stable group time requirement for childcare establishments, summer camps, and other educational or recreational institutions or programs providing care or supervision for children of all ages has been decreased from four weeks to three consecutive weeks. This gradual and measured resumption of activity is designed to manage the overall volume, duration,



and intensity of person-to-person contact to prevent a surge in COVID-19 cases in the County and neighboring counties. As further provided in Section 11 below, the Health Officer will continue to monitor the risks of the activities and businesses allowed under this Order based on the COVID-19 Indicators (as defined in Section 11) and other data, and may, if conditions support doing so, incrementally add to the list of Additional Businesses and Additional Activities. The activities allowed by this Order will be assessed on an ongoing basis and these activities and others allowed by the Order may need to be modified (including, without limitation, temporarily restricted or prohibited) if the risk associated with COVID-19 increases in the future. As of the effective date and time of this Order set forth in Section 18 below, all individuals, businesses, and government agencies in the County are required to follow the provisions of this Order.

2. The primary intent of this Order is to ensure that County residents continue to shelter in their places of residence to slow the spread of COVID-19 and mitigate the impact on delivery of critical healthcare services. This Order allows a limited number of Additional Businesses and Additional Activities to resume while the Health Officer continues to assess the transmissibility and clinical severity of COVID-19 and monitors COVID-19 Indicators described in Section 11. All provisions of this Order must be interpreted to effectuate this intent. Failure to comply with any of the provisions of this Order constitutes an imminent threat and menace to public health, constitutes a public nuisance, and is punishable by fine, imprisonment, or both.
3. All individuals currently living within the County are ordered to shelter at their place of residence. They may leave their residence only for Essential Activities as defined in Section 15.a, Outdoor Activities as defined in Section 15.m, and Additional Activities as defined in Section 15.o; Essential Governmental Functions as defined in Section 15.d; Essential Travel as defined in Section 15.i; to work for Essential Businesses as defined in Section 15.f, Outdoor Businesses as defined in Section 15.l, and Additional Businesses as defined in Section 15.n; or to perform Minimum Basic Operations for other businesses that must remain temporarily closed, as provided in Section 15.g. For clarity, individuals who do not currently reside in the County must comply with all applicable requirements of the Order when in the County. Individuals experiencing homelessness are exempt from this Section, but are strongly urged to obtain shelter, and governmental and other entities are strongly urged to, as soon as possible, make such shelter available and provide handwashing or hand sanitation facilities to persons who continue experiencing homelessness.
4. When people need to leave their place of residence for the limited purposes allowed in this Order, they must strictly comply with Social Distancing Requirements as defined in Section 15.k, except as expressly provided in this Order, and must wear Face Coverings as provided in, and subject to the limited exceptions in, Health Officer Order No. c19-8(b) issued on May 19, 2020 (the "Face Covering Order").
5. All businesses with a facility in the County, except Essential Businesses, Outdoor Businesses, and Additional Businesses, as defined in Section 15, are required to cease all activities at facilities located within the County except Minimum Basic Operations, as defined in Section 15. For clarity, all businesses may continue operations consisting exclusively of owners, personnel, volunteers, or contractors performing activities at their own residences (i.e., working from home). All Essential



Businesses are strongly encouraged to remain open. But all businesses are directed to maximize the number of personnel who work from home. Essential Businesses, Outdoor Businesses, and Additional Businesses may only assign those personnel who cannot perform their job duties from home to work outside the home. Outdoor Businesses must conduct all business and transactions involving members of the public outdoors.

6. As a condition of operating under this Order, the operators of all businesses must prepare or update, post, implement, and distribute to their personnel a Social Distancing Protocol for each of their facilities in the County frequented by personnel or members of the public, as specified in Section 15.h. In addition to the Social Distancing Protocol, all businesses allowed to operate under this Order must follow any industry-specific guidance issued by the Health Officer and the State of California related to COVID-19 and any conditions on operation specified in this Order, including those specified in Appendix C-1. Except as otherwise provided in Appendix C-1, businesses that include an Essential Business or Outdoor Business component at their facilities alongside other components must, to the extent feasible, scale down their operations to the Essential Business and Outdoor Business components only; provided, however, mixed retail businesses that are otherwise allowed to operate under this Order may continue to stock and sell non-essential products.
7. All public and private gatherings of any number of people occurring outside a single household or living unit are prohibited, except for the limited purposes expressly permitted in this Order and the Vehicle-Based Gathering Order issued May 11, 2020 Health Officer Order No. c19-9 (the "Vehicle-Based Gathering Order"). Nothing in this Order prohibits members of a single household or living unit from engaging in Essential Travel, Essential Activities, Outdoor Activities, or Additional Activities together.
8. All travel, including, but not limited to, travel on foot, bicycle, scooter, motorcycle, automobile, or public transit, except Essential Travel, as defined below in Section 15.i, is prohibited. People may use public transit only for purposes of performing Essential Activities, Outdoor Activities, or Additional Activities, or to travel to and from Essential Businesses, Outdoor Businesses, or Additional Businesses, to maintain Essential Governmental Functions, or to perform Minimum Basic Operations at businesses that are not allowed to resume operations. Transit agencies and people riding on public transit must comply with Social Distancing Requirements, as defined in Section 15.k, to the greatest extent feasible, and personnel and passengers must wear Face Coverings as required by the Face Covering Order. This Order allows travel into or out of the County only to perform Essential Activities, Outdoor Activities, participate in Vehicle-Based Gatherings, or Additional Activities; to operate, perform work for, or access a business allowed to operate under this Order; to perform Minimum Basic Operations at other businesses; or to maintain Essential Governmental Functions.
9. This Order is issued based on evidence of continued significant community transmission of COVID-19 within the County and throughout the Bay Area; continued uncertainty regarding the degree of undetected asymptomatic transmission; scientific evidence and best practices regarding the most effective approaches to slow the transmission of communicable diseases generally and COVID-19 specifically; evidence that the age, condition, and health of a significant portion of the population of the County places it at risk for serious health complications, including death, from COVID-19; and further evidence that others, including younger and otherwise healthy people, are also at risk for serious



outcomes. Due to the outbreak of the COVID-19 disease in the general public, which is now a pandemic according to the World Health Organization, there is a public health emergency throughout the County. Making the problem worse, some individuals who contract the virus causing the COVID-19 disease have no symptoms or have mild symptoms, which means they may not be aware they carry the virus and are transmitting it to others. Further, evidence shows that the virus can survive for hours to days on surfaces and be indirectly transmitted between individuals. Because even people without symptoms can transmit the infection, and because evidence shows the infection is easily spread, gatherings and other direct or indirect interpersonal interactions can result in preventable transmission of the virus.

10. The collective efforts taken to date regarding this public health emergency have slowed the virus' trajectory, but the emergency and the attendant risk to public health remain significant. As of May 28, 2020, there are 2022 confirmed cases of COVID-19 in the County (up from 44 on March 15, 2020, just before the first shelter-in-place order) as well as at least 11,968 confirmed cases (up from 2,092 confirmed cases on March 15, 2020) and at least 406 deaths (up from 51 deaths on March 15, 2020) in the seven Bay Area jurisdictions that first issued Orders on March 16, 2020. The cumulative number of confirmed cases continues to increase, though the rate of increase has slowed in the weeks leading up to this Order. Evidence suggests that the restrictions on mobility and Social Distancing Requirements imposed by the Prior Order (and the orders that preceded it) are slowing the rate of increase in community transmission and confirmed cases by limiting interactions among people, consistent with scientific evidence of the efficacy of similar measures in other parts of the country and world.
11. The Health Officer is monitoring several key indicators ("COVID-19 Indicators"), which are among the many factors informing the decision whether to modify existing shelter-in-place restrictions. Progress on some of these COVID-19 Indicators—specifically related to hospital utilization and capacity makes it appropriate, at this time, to allow for expanded beach access, reduction in stable group time requirements in childcare establishments, summer camps, and other educational or recreational institutions or programs providing care or supervision for children of all ages settings, certain Additional Businesses to resume operations and Additional Activities to take place under specified conditions, as set forth in Appendixes C-1 and C-2. But the continued prevalence of the virus that causes COVID-19 requires most activities and business functions to remain restricted, and those activities that are allowed to occur must do so subject to social distancing and other infection control practices identified by the Health Officer. Evaluation of the COVID-19 Indicators will be critical to determinations by the Health Officer regarding whether the restrictions imposed by this Order will be further modified to ease or tighten the restrictions imposed by this Order and augment, limit, or prohibit the Additional Businesses and Additional Activities allowed to resume. The Health Officer will continually review whether modifications to the Order are warranted based on (1) progress on the COVID-19 Indicators; (2) developments in epidemiological and diagnostic methods for tracing, diagnosing, treating, or testing for COVID-19; and (3) scientific understanding of the transmission dynamics and clinical impact of COVID-19. The COVID-19 Indicators include, but are not limited to, the following:
 - a. The capacity of hospitals and the health system in the County and region, including acute care beds and intensive care unit beds, to provide care for COVID-19 patients and other patients, including during a surge in COVID-19 cases.



- b. The supply of personal protective equipment (“PPE”) available for hospital staff and other healthcare providers and personnel who need PPE to safely respond to and treat COVID-19 patients.
 - c. The ability and capacity to quickly and accurately test persons to determine whether they are COVID-19 positive, especially those in vulnerable populations or high-risk settings or occupations.
 - d. The ability to conduct case investigation and contact tracing for the volume of cases and associated contacts that will continue to occur, isolating confirmed cases and quarantining persons who have had contact with confirmed cases.
12. The scientific evidence shows that at this stage of the emergency, it remains essential to continue to slow virus transmission to help (a) protect the most vulnerable; (b) prevent the health care system from being overwhelmed; (c) prevent long-term chronic health conditions, such as cardiovascular, kidney, and respiratory damage and loss of limbs from blood clotting; and (d) prevent deaths. Continuation of the Prior Order is necessary to slow the spread of the COVID-19 disease, preserving critical and limited healthcare capacity in the County and advancing toward a point in the public health emergency where transmission can be controlled. At the same time, since the Prior Orders were issued the County has continued to make progress in expanding health system capacity and healthcare resources and in slowing community transmission of COVID-19. In light of progress on these indicators, and subject to continued monitoring and potential public health-based responses, in addition to those already allowed to operate under the Prior Order as Essential Businesses, Outdoor Businesses, and Additional Businesses, it is appropriate at this time to begin allowing additional operations specified in Additional Businesses Appendix C-1. These businesses are identified based on health-related considerations and transmission risk factors including, but not limited to, the intensity and quantity of contacts and the ability to substantially mitigate transmission risks associated with the operations.
13. This Order is issued in accordance with, and incorporates by reference, the March 4, 2020 Proclamation of a State of Emergency issued by Governor Gavin Newsom, the March 3, 2020 Proclamation by the Director of Emergency Services Declaring the Existence of a Local Emergency in the County, the March 3, 2020 Declaration of Local Health Emergency Regarding Novel Coronavirus 2019 (COVID-19) issued by the Health Officer, the March 10, 2020 Resolution of the Board of Supervisors of the County of San Mateo Ratifying and Extending the Declaration of a Local Health Emergency, the April 7, 2020, Board of Supervisors’ Resolution Further Extending the Proclamation of Local Health Emergency Until the County Takes Action to Terminate the Local Emergency, the April 15, 2020 Order of the Health Officer No. c19-1b extending and revising the Order restricting visitors to skilled nursing facilities to all residential type facilities, the April 13, 2020 Order of the Health Officer No. c19-3c extending and revising the School Operations Modification Order, the March 24, 2020 Order of the Health Officer No. c19-4 directing all laboratories conducting COVID-19 diagnostic tests to report COVID-19 test information, the April 6, 2020 Orders of the Health Officer Nos. c19-6 and c19-7 requiring isolation for COVID-19 positive individuals and quarantine of Close Contacts of COVID-19 positive individuals, the Face Covering Order, the May 11, 2020 Order of the Health Officer No. c19-9



allowing for certain highly regulated vehicle-based gatherings, and the May 13, 2020 Order of the Health Officer No. c19-10 directing clinical laboratories to accept assignments for diagnostic tests from Optum Serve and Logistics Health Inc. |

14. This Order is also issued in light of the March 19, 2020 Order of the State Public Health Officer (the “State Shelter Order”), which set baseline statewide restrictions on non-residential business activities, effective until further notice, and the Governor’s March 19, 2020 Executive Order N-33-20 directing California residents to follow the State Shelter Order. The May 4, 2020 Executive Order issued by Governor Newsom and May 7, 2020 Order of the State Public Health Officer permit certain businesses to reopen if a local health officer believes the conditions in that jurisdictions warrant it, but expressly acknowledge the authority of local health officers to establish and implement public health measures within their respective jurisdictions that are more restrictive than those implemented by the State Public Health Officer as well as subsequent modifications to the Order allowing additional businesses and activities related to in-store retail, places of worship and protest. This Order may adopt in certain respects more stringent restrictions addressing the particular facts and circumstances in this County, which are necessary to control the public health emergency as it is evolving within the County and the Bay Area. Without this tailored set of restrictions that further reduces the number of interactions between persons, scientific evidence indicates that the public health crisis in the County will worsen to the point at which it may overtake available health care resources within the County and increase the death rate. Also, this Order enumerates additional restrictions on non-work-related travel not covered by the State Shelter Order; sets forth mandatory Social Distancing Requirements for all individuals in the County when engaged in activities outside their residences; and adds a mechanism to ensure that all businesses with facilities that are allowed to operate under the Order comply with the Social Distancing Requirements. Where a conflict exists between this Order and any state public health order related to the COVID-19 pandemic, the most restrictive provision controls. Consistent with California Health and Safety Code section 131080 and the Health Officer Practice Guide for Communicable Disease Control in California, except where the State Health Officer may issue an order expressly directed at this Order and based on a finding that a provision of this Order constitutes a menace to public health, any more restrictive measures in this Order continue to apply and control in this County. In addition, to the extent any federal guidelines allow activities that are not allowed by this Order, this Order controls and those activities are not allowed.

15. Definitions and Exemptions.

- a. For the purposes of this Order, individuals may leave their residence only to perform the following “Essential Activities.” But people at high risk of severe illness from COVID-19 and people who are sick are strongly urged to stay in their residence to the extent possible, except as necessary to seek or provide medical care or Essential Governmental Functions. Essential Activities are:
 - i. To engage in activities or perform tasks important to their health and safety, or to the health and safety of their family or household members (including pets), such as, by way of example only and without limitation, obtaining medical supplies or medication, or visiting a health care professional.



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- ii. 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, canned food, dry goods, fresh fruits and vegetables, pet supply, fresh meats, fish, and poultry, and any other household consumer products, or products necessary to maintain the habitability, sanitation, and operation of residences.
- iii. To engage in outdoor recreation activity, including, by way of example and without limitation, walking, hiking, bicycling, and running, in compliance with Social Distancing Requirements and with the following limitations:
 - 1. Outdoor recreation activity at parks, beaches, and other open spaces must comply with any restrictions on access and use established by the Health Officer, government, or other entity that manages such area to reduce crowding, prevent use of shared equipment outside a household and risk of transmission of COVID-19. Such restrictions may include, but are not limited to, restricting the number of entrants, closing the area to vehicular access and parking, or closure to all public access. Parks, beaches, and other open spaces that remain open must be actively monitored and managed by the appropriate authority;
 - 2. Except as otherwise provided in Appendix C-2, use of outdoor recreational areas and facilities with high-touch equipment or that encourage gathering, including, but not limited to, playgrounds, gym equipment, climbing walls, picnic areas, dog parks, spas, and barbecue areas, is prohibited outside of residences, and all such areas shall be closed to public access including by signage and, as appropriate, by physical barriers;
 - 3. Except as otherwise provided in Appendix C-2, sports or activities that include the use of shared equipment or physical contact between participants may only be engaged in by members of the same household or living unit; and
 - 4. Use of shared outdoor facilities for recreational activities that may occur outside of residences consistent with the restrictions set forth in subsections 1, 2, and 3, above, including, but not limited to, golf courses, skate parks, and athletic fields, must, before they may begin, comply with social distancing and health/safety protocols posted at the site and any other restrictions, including prohibitions, on access and use established by the Health Officer, government, or other entity that manages such area to reduce crowding and risk of transmission of COVID-19.
- iv. To perform work for or access an Essential Business, Outdoor Business, or Additional Business; or to otherwise carry out activities specifically permitted in this Order, including Minimum Basic Operations, as defined in this Section.
- v. To provide necessary care for a family member or pet in another household who has no other source of care.
- vi. To attend a funeral with no more than 10 individuals present.
- vii. To move residences. When moving into or out of the Bay Area region, individuals are strongly urged to quarantine for 14 days. To quarantine, individuals should follow the guidance of the United States Centers for Disease Control and Prevention.
- viii. To engage in Additional Activities, as specified in Appendix C-2.
- ix. To participate in a vehicle-based gathering as permitted in the Vehicle-Based Gathering Order.



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- b. For the purposes of this Order, individuals may leave their residence to work for, volunteer at, or obtain services at “Healthcare Operations,” including, without limitation, hospitals, clinics, COVID-19 testing locations, dentists, pharmacies, blood banks and blood drives, pharmaceutical and biotechnology companies, other healthcare facilities, healthcare suppliers, home healthcare services providers, mental health providers, or any related and/or ancillary healthcare services. “Healthcare Operations” also includes veterinary care and all healthcare services provided to animals. This exemption for Healthcare Operations shall be construed broadly to avoid any interference with the delivery of healthcare, broadly defined. “Healthcare Operations” excludes fitness and exercise gyms and similar facilities.
- c. For the purposes of this Order, individuals may leave their residence to provide any services or perform any work necessary to the operation and maintenance of “Essential Infrastructure,” including airports, utilities (including water, sewer, gas, and electrical), oil refining, roads and highways, public transportation, solid waste facilities (including collection, removal, disposal, recycling, and processing facilities), cemeteries, mortuaries, crematoriums, and telecommunications systems (including the provision of essential global, national, and local infrastructure for internet, computing services, business infrastructure, communications, and web-based services).
- d. For the purposes of this Order, all first responders, emergency management personnel, emergency dispatchers, court personnel, and law enforcement personnel, and others who need to perform essential services are categorically exempt from this Order to the extent they are performing those essential services. Further, nothing in this Order shall prohibit any individual from performing or accessing “Essential Governmental Functions,” as determined by the governmental entity performing those functions in the County. Each governmental entity shall identify and designate appropriate personnel, volunteers, or contractors to continue providing and carrying out any Essential Governmental Functions, including the hiring or retention of new personnel or contractors to perform such functions. Each governmental entity and its contractors must employ all necessary emergency protective measures to prevent, mitigate, respond to, and recover from the COVID-19 pandemic, and all Essential Governmental Functions shall be performed in compliance with Social Distancing Requirements to the greatest extent feasible.
- e. For the purposes of this Order, a “business” includes any for-profit, non-profit, or educational entity, whether a corporate entity, organization, partnership or sole proprietorship, and regardless of the nature of the service, the function it performs, or its corporate or entity structure.
- f. For the purposes of this Order, “Essential Businesses” are:
 - i. Healthcare Operations and businesses that operate, maintain, or repair Essential Infrastructure;
 - ii. Grocery stores, certified farmers’ markets, farm and produce stands, supermarkets, food banks, convenience stores, and other establishments engaged in the retail sale of unprepared food, canned food, dry goods, non-alcoholic beverages, fresh fruits and vegetables, pet supply, fresh meats, fish, and poultry, as well as hygienic products and



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- household consumer products necessary for personal hygiene or the habitability, sanitation, or operation of residences. The businesses included in this subparagraph (ii) include establishments that sell multiple categories of products provided that they sell a significant amount of essential products identified in this subparagraph, such as liquor stores that also sell a significant amount of food.
- iii. Food cultivation, including farming, livestock, and fishing;
 - iv. Businesses that provide food, shelter, and social services, and other necessities of life for economically disadvantaged or otherwise needy individuals;
 - v. Construction, but only as permitted under the State Shelter Order and only pursuant to the Construction Safety Protocols listed in Appendix B and incorporated into this Order by this reference. Public works projects shall also be subject to Appendix B, except if other protocols are specified by the Health Officer;
 - vi. Newspapers, television, radio, and other media services;
 - vii. Gas stations and auto-supply, auto-repair (including, but not limited to, for cars, trucks, motorcycles and motorized scooters), and automotive dealerships, but only for the purpose of providing auto-supply and auto-repair services. This subparagraph (vii) does not restrict the on-line purchase of automobiles if they are delivered to a residence or Essential Business;
 - viii. Bicycle repair and supply shops;
 - ix. Banks money remittance services, financing services at pawn shops, check cashing services, money lenders, and similar financial institutions. For businesses that mix a financial service component with a retail or other component, only the financial service can be open;
 - x. Service providers that enable real estate transactions (including rentals, leases, and home sales), including, but not limited to, real estate agents, escrow agents, notaries, and title companies, provided that appointments and other residential real estate viewings must only occur virtually or, if a virtual viewing is not feasible, by appointment with no more than two visitors at a time residing within the same household or living unit and one individual showing the unit (except that in person visits are not allowed when the occupant is present in the residence);
 - xi. Hardware stores;
 - xii. Plumbers, electricians, exterminators, and other service providers who provide services that are necessary to maintaining the habitability, sanitation, or operation of residences and Essential Businesses;
 - xiii. Businesses providing mailing and shipping services, including post office boxes;
 - xiv. Educational institutions—including public and private K-12 schools, colleges, and universities—for purposes of facilitating distance learning or performing essential functions, or as allowed under subparagraph xxvi, provided that social distancing of six feet per person is maintained to the greatest extent possible;
 - xv. Laundromats, drycleaners, and laundry service providers;
 - xvi. Restaurants and other facilities that prepare and serve food, but only for delivery or carry out. Schools and other entities that typically provide free food services to students or members of the public may continue to do so under this Order on the condition that the food is provided to students or members of the public on a pick-up and take-away basis



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- 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;
- xvii. Funeral home providers, mortuaries, cemeteries, and crematoriums, to the extent necessary for the transport, preparation, or processing of bodies or remains;
 - xviii. Businesses that supply other Essential Businesses and Outdoor Businesses with the support or supplies necessary to operate, but only to the extent that they support or supply these businesses. This exemption shall not be used as a basis for engaging in sales to the general public from retail storefronts;
 - xix. Businesses that have the primary function of shipping or delivering groceries, food, or other goods directly to residences or businesses. This exemption shall not be used to allow for manufacturing or assembly of non-essential products or for other functions besides those necessary to the delivery operation;
 - xx. Airlines, taxis, rental car companies, rideshare services (including shared bicycles and scooters), and other private transportation providers providing transportation services necessary for Essential Activities and other purposes expressly authorized in this Order;
 - xxi. Home-based care for seniors, adults, children, and pets;
 - xxii. Residential facilities and shelters for seniors, adults, and children;
 - xxiii. Professional services, such as legal, notary, or accounting services, when necessary to assist in compliance with non-elective, legally required activities or in relation to death or incapacity;
 - xxiv. Services to assist individuals in finding employment with Essential Businesses;
 - xxv. Moving services that facilitate residential or commercial moves that are allowed under this Order; and
 - xxvi. Childcare establishments, summer camps, and other educational or recreational institutions or programs providing care or supervision for children of all ages. To the extent possible and compliant with any licensing requirements, these operations must also comply with the following conditions:
 1. They must be carried out in stable groups of 12 or fewer children (“stable” means that the same 12 or fewer children are in the same group each day and for at least three consecutive weeks).
 2. Children shall not change from one group to another or attend more than one childcare establishment, summer camp, other educational or recreational instruction or program simultaneously.
 3. If more than one group of children is at one facility, each group shall be in separate rooms or spaces that cannot be accessed by children or adults outside the stable group. Groups shall not mix with each other.
 4. Providers, educators and other staff cannot serve more than one group of children and shall remain solely with that group of children during the duration of the childcare establishment, summer camp, other educational or recreational institution or program.
- g. For the purposes of this Order, “Minimum Basic Operations” means the following activities for businesses, provided that owners, personnel, and contractors comply with Social Distancing Requirements as defined this Section, to the extent possible, while carrying out such operations:



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- i. The minimum necessary activities to maintain and protect the value of the business's inventory and facilities; ensure security, safety, and sanitation; process payroll and employee benefits; provide for the delivery of existing inventory directly to residences or businesses; and related functions. For clarity, this section does not permit businesses to provide curbside pickup to customers.
 - ii. The minimum necessary activities to facilitate owners, personnel, and contractors of the business being able to continue to work remotely from their residences, and to ensure that the business can deliver its service remotely.

- h. For the purposes of this Order, all businesses that are operating at facilities in the County visited or used by the public or personnel must, as a condition of such operation, prepare and post a "Social Distancing Protocol" for each of these facilities; provided, however, that construction activities shall instead comply with the Construction Project Safety Protocols set forth in Appendix B and not the Social Distancing Protocol. The Social Distancing Protocol must be substantially in the form attached to this Order as Appendix A, and it must be updated from prior versions to address new requirements listed in this Order or in related guidance or directives from the Health Officer. The Social Distancing Protocol must be posted at or near the entrance of the relevant facility, and shall be easily viewable by the public and personnel. A copy of the Social Distancing Protocol must also be provided to each person performing work at the facility. All businesses subject to this paragraph shall implement the Social Distancing Protocol and provide evidence of its implementation to any authority enforcing this Order upon demand. The Social Distancing Protocol must explain how the business is achieving the following, as applicable:
 - i. Limiting the number of people who can enter into the facility at any one time to ensure that people in the facility can easily maintain a minimum six-foot distance from one another at all times, except as required to complete Essential Business activity;
 - ii. Requiring face coverings to be worn by all persons entering the facility, other than those exempted from face covering requirements (e.g. young children);
 - iii. Where lines may form at a facility, marking six-foot increments at a minimum, establishing where individuals should stand to maintain adequate social distancing;
 - iv. Providing hand sanitizer, soap and water, or effective disinfectant at or near the entrance of the facility and in other appropriate areas for use by the public and personnel, and in locations where there is high-frequency employee interaction with members of the public (e.g. cashiers);
 - v. Providing for contactless payment systems or, if not feasible to do so, the providing for disinfecting all payment portals, pens, and styluses after each use;
 - vi. Regularly disinfecting other high-touch surfaces;
 - vii. Posting a sign at the entrance of the facility informing all personnel and customers that they should: avoid entering the facility if they have any COVID-19 symptoms; maintain a minimum six-foot distance from one another; sneeze and cough into one's elbow; not shake hands or engage in any unnecessary physical contact; and
 - viii. Any additional social distancing measures being implemented (see the Centers for Disease Control and Prevention's guidance at: <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>).



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- i. For the purposes of this Order, “Essential Travel” means travel for any of the following purposes:
 - i. Travel related to the provision of or access to Essential Activities, Essential Governmental Functions, Essential Businesses, Minimum Basic Operations, Outdoor Activities, Outdoor Businesses, Additional Activities, and Additional Businesses.
 - ii. Travel to care for any elderly, minors, dependents, or persons with disabilities.
 - iii. Travel to or from educational institutions for purposes of receiving materials for distance learning, for receiving meals, and any other related services.
 - iv. Travel to return to a place of residence from outside the County.
 - v. Travel required by law enforcement or court order.
 - vi. Travel required for non-residents to return to their place of residence outside the County. Individuals are strongly encouraged to verify that their transportation out of the County remains available and functional prior to commencing such travel.
 - vii. Travel to manage after-death arrangements and burial.
 - viii. Travel to arrange for shelter or avoid homelessness.
 - ix. Travel to avoid domestic violence or child abuse.
 - x. Travel for parental custody arrangements.
 - xi. Travel to a place to temporarily reside in a residence or other facility to avoid potentially exposing others to COVID-19, such as a hotel or other facility provided by a governmental authority for such purposes.
 - xii. Travel to participate in a vehicle-based gathering as permitted by the Vehicle-Based Gathering Order.

- j. For purposes of this Order, “residences” include hotels, motels, shared rental units, and similar facilities. Residences also include living structures and outdoor spaces associated with those living structures, such as patios, porches, backyards, and front yards that are only accessible to a single family or household unit.

- k. For purposes of this Order, “Social Distancing Requirements” means:
 - i. Maintaining at least six-foot social distancing from individuals who are not part of the same household or living unit;
 - ii. Frequently washing hands with soap and water for at least 20 seconds, or using hand sanitizer that is recognized by the Centers for Disease Control and Prevention as effective in combatting COVID-19;
 - iii. Covering coughs and sneezes with a tissue or fabric or, if not possible, into the sleeve or elbow (but not into hands);
 - iv. Wearing a face covering when out in public, consistent with the orders or guidance of the Health Officer; and
 - v. Avoiding all social interaction outside the household when sick with a fever, cough, or other COVID-19 symptoms.

All individuals must strictly comply with Social Distancing Requirements, except to the limited extent necessary to provide care (including childcare, adult or senior care, care to individuals



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with special needs, and patient care); as necessary to carry out the work of Essential Businesses, Essential Governmental Functions, or provide for Minimum Basic Operations; or as otherwise expressly provided in this Order. Outdoor Activities, Outdoor Businesses, Additional Activities, and Additional Businesses must strictly adhere to these Social Distancing Requirements.

1. For purposes of this Order, “Outdoor Businesses” means:
 - i. The following businesses that normally operated primarily outdoors prior to March 16, 2020 and where there is the ability to fully maintain social distancing of at least six feet between all persons and can be operated such that all business and transactions involving members of the public can occur outdoors:
 1. Businesses primarily operated outdoors, such as wholesale and retail plant nurseries, agricultural operations, and garden centers.
 2. Service providers that primarily provide outdoor services, such as landscaping and gardening services, and environmental site remediation services.

For clarity, “Outdoor Businesses” do not include outdoor restaurants, cafes, or bars. Except as otherwise provided in Appendix C-1, they also do not include businesses that promote large, coordinated, and prolonged gatherings, such as outdoor concert venues and amusement parks.

- m. For purposes of this Order, “Outdoor Activities” means:
 - i. To obtain goods, services, or supplies from, or perform work for, an Outdoor Business.
 - ii. To engage in outdoor recreation as permitted in Section 15.a.
- n. For purposes of this Order, “Additional Business” means any business, entity, or other organization identified as an Additional Business in Appendix C-1, which will be updated as warranted based on the Health Officer’s ongoing evaluation of the COVID-19 Indicators and other data. In addition to the other requirements in this Order, operation of those Additional Businesses is subject to any conditions and health and safety requirements set forth in Appendix C-1 and in any industry-specific guidance issued by the Health Officer.
- o. For purposes of this Order, “Additional Activities” means:
 - i. To obtain goods, services, or supplies from, or perform work for, Additional Businesses identified in Appendix C-1, subject to requirements in this Order, and any conditions and health and safety requirements set forth in this Order or in any industry-specific guidance issued by the Health Officer.
 - ii. To engage in outdoor recreation activities or other activities set forth in Appendix C-2, subject to any conditions and health and safety requirements set forth there.

16. Government agencies and other entities operating shelters and other facilities that house or provide meals or other necessities of life for individuals experiencing homelessness must take appropriate steps to help ensure compliance with Social Distancing Requirements, including adequate provision of hand sanitizer. Also, individuals experiencing homelessness who are unsheltered and living in encampments



should, to the maximum extent feasible, abide by 12 foot by 12 foot distancing for the placement of tents, and government agencies should provide restroom and hand washing facilities for individuals in such encampments as set forth in Centers for Disease Control and Prevention Interim Guidance Responding to Coronavirus 2019 (COVID-19) Among People Experiencing Unsheltered Homelessness (<https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/unsheltered-homelessness.html>).

17. Pursuant to Government Code sections 26602 and 41601 and Health and Safety Code section 101029, the Health Officer requests that the Sheriff and all chiefs of police in the County ensure compliance with and enforce this Order. The violation of any provision of this Order constitutes an imminent threat and menace to public health, constitutes a public nuisance, and is punishable by fine, imprisonment, or both.
18. Sub-paragraph 15(a)(iii) is effective immediately. This remainder of this Order shall become effective at 12:01 a.m. on June 1, 2020 and will continue to be in effect until it is rescinded, superseded, or amended in writing by the Health Officer. Until June 1, 2020 at 12:01 a.m. and with the exception of Sub-paragraph 15(a)(iii), the Order of May 15, 2020 remains in effect.
19. Copies of this Order shall promptly be: (1) made available at 400 County Center, Redwood City, CA 94063; (2) posted on the County Public Health Department website (www.smchealth.org); and (3) provided to any member of the public requesting a copy of this Order.
20. If any provision of this Order or its application to any person or circumstance is held to be invalid, the remainder of the Order, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Order are severable.
21. This Order is intended to fully harmonize the County with the State as to the businesses allowed. If a business is allowed under the State Shelter Order, the intention is that it is allowed under the County Order. However, this Order provides some additional requirements for how business is performed, primarily by continuing to require development, implementation and posting of a Social Distancing Protocol and requiring operational plans consistent with State guidelines as well as continuing to require that everyone who can work from home be assigned to work from home. This Order also continues to limit the activities people can do and how they do them. It does this by continuing to require people to shelter-in-place, by requiring social distancing and face coverings and prohibiting gatherings, including unnecessary interactions with people outside of a household unit.
22. These modifications are being made in attempt to strike a balance. They are an attempt to find a way to increase the immunity of the population (in public health terms, this is called “herd immunity”) slowly and methodically, while minimizing death, with equity in mind, while not overloading the healthcare system, and minimizing economic damage. Many of these considerations work in opposite directions. These modifications are not being made because it is safe to be out and about. The virus continues to circulate in our community, and the increase in interactions among people that these modifications allow is likely to spread the virus at a higher rate. Whether these modifications allow the virus to spread out of control, as we saw in February and March and resulted in the first shelter in place order, is yet to be



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seen. The risk of exposure to COVID-19 looms large for all of us. The public and open businesses need to fully do their part to minimize transmission of the virus.

IT IS SO ORDERED:

A handwritten signature in black ink, appearing to read "Scott Morrow MD, MPH".

Scott Morrow MD, MPH
Health Officer of the County of San Mateo

Dated: May 28, 2020

- Attachments: Appendix A – Social Distancing Protocol
Appendix B-1 – Small Construction Project Safety Protocol
Appendix B-2 – Large Construction Project Safety Protocol
Appendix C-1 – Additional Businesses
Appendix C-2 – Additional Activities



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Public Health, Policy & Planning
225 37th Avenue
San Mateo, CA 94403
smchealth.org

Order No. c19-5e – Appendix C-1 (REVISED): Additional Businesses Permitted to Operate

Effective June 1, 2020

General Requirements

The “Additional Businesses” listed below may begin operating, subject to the requirements set forth in the Order and to any additional requirements set forth below or in separate industry-specific guidance by the Health Officer. These businesses were selected to conform with the orders and guidance issued by the State of California and based on its determination that it would be appropriate to allow these businesses to resume operation and this Appendix should be interpreted accordingly.

To mitigate the risk of transmission to the greatest extent possible, before resuming operations, each Additional Business must:

- a. Prepare, post, implement, and distribute to their Personnel, as defined below, a Social Distancing Protocol as specified in Section 15.h of the Order for each of their facilities in the County frequented by Personnel or members of the public. If it is a service business that operates at customer homes, it must instead of posting at the home, send an electronic version of the Social Distancing Protocol to the customer at least one day in advance of the service being provided; and
- b. Prepare, post, implement, and distribute to their Personnel a written health and safety plan as required by the State of California outlined in its guidance that addresses all applicable best practices set forth in relevant Health Officer directives, including how it will comply with all applicable Statewide guidance issued by the State of California, which is hereby incorporated by reference and should be treated as if issued by the Health Officer. If it is a service business that operates at customer homes, it must instead of posting at the home, send an electronic version of the plan to the customer at least one day in advance of the service being provided.

As used in this Appendix C-1, “Personnel” means the following people who provide goods or services associated with the Additional Business in the County: employees; contractors and sub-contractors (such as those who sell goods or perform services onsite or who deliver goods for the business); independent contractors (such as “gig workers” who perform work via the Additional Business’s app or other online interface); vendors who are permitted to sell goods onsite; volunteers; and other individuals who regularly provide services onsite at the request of the Additional Business.

Also, each Additional Business must comply with Social Distancing Requirements as well as all relevant state guidance (found here: <https://covid19.ca.gov/industry-guidance/>), local directives, and Health Officer orders. Where a conflict exists between the state guidance and local public health directives related to the COVID-19 pandemic, including Health Officer orders, the most restrictive provision controls.





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List of Additional Businesses:

For purposes of the Order, Additional Businesses include the following:

- (1) Retail Stores and Retail Supply Chain Businesses** (including indoor and outdoor shopping malls; bookstores; jewelry stores; toy stores; clothing and shoe stores; home and furnishing stores; sporting goods stores; and florists).
- a. Basis for Addition. The State of California has determined that it would be appropriate to allow these businesses to resume operation. For clarity, this provision does not include businesses like dine-in restaurants, stadiums, music venues, entertainment venues, and theaters.
 - b. Description and Additional Conditions to Operate. Retail businesses and the businesses that support them are permitted to operate subject to the stated limitations and conditions:
 - i. These retail stores must (if feasible) provide for curbside/outside pickup or delivery, including a drive-through window, as a way to prevent crowds from forming and facilitate social distancing inside the retail business. As to curbside/outside pickup, retail businesses must implement the following:
 - a. Except as provided in subsection (b) below, stores must utilize direct access to an immediately adjacent sidewalk, street or alley area for pickup by customers using any mode of travel, without blocking pedestrian access or causing pedestrian or vehicle congestion.
 - b. Retail stores, including those in an enclosed indoor shopping center, that do not have direct access to an adjacent sidewalk, street or alley area, must develop a written plan in collaboration with the owner of the area to be utilized, including the shopping center operator or owner, to designate clearly identified outdoor areas for pickup. The plan must address how the pickup process will be monitored and managed, address customers using any mode of travel, and do so without blocking pedestrian access or causing pedestrian or vehicle congestion and ensuring social distancing. The plan must also address how it will achieve a similar low level of contact intensity and number of contacts as curbside pickup by non-enclosed shopping centers.
 - c. Products must be ordered in advance and remotely either by phone, internet or other technology.
 - ii. Retail stores providing in-store shopping must, in the required health and safety plan, identify the number of shoppers (complying with any requirements or limitations established by the State of California) that can be accommodated, in a manner that ensures that shoppers and personnel can maintain social distancing and put in place measures to enforce that limit.
 - iii. Businesses that manufacture the goods sold at retail stores covered in this category are allowed to operate but only to the extent that they are manufacturing goods for these retail stores.
 - iv. Businesses that provide warehousing and logistical support to these retail stores are allowed to operate but only to the extent they support these retail stores.



(2) Limited Services Which Do Not Require Close Customer Contact (such as pet grooming; dog walking; car washes; appliance repair; residential and janitorial cleaning; and plumbing).

- a. Basis for Addition. The State of California has determined that it would be appropriate to allow these businesses to resume operation. In addition, these Limited Services has low contact intensity. For clarity, this provision does not include businesses like dine-in restaurants or hair salons and barbershops. Also, opening these services should result in a limited increase in the number of people reentering the workforce and the overall volume of commercial activity and mitigation measures can meaningfully decrease the resulting public health risk.
- b. Description and Additional Conditions to Operate. Limited Services are services that are performed in a manner in which the service provider and customer maintain at least six feet distance and wear a face covering at all times. Personnel must disinfect any surfaces in customers' homes or customers' items that they touch before and after the service.

(3) Outdoor Museums

- a. Basis for Addition. The State of California has determined that it would be appropriate to allow these businesses to resume operation. In addition, Outdoor Museums have low contact intensity and a moderate number of contacts where interaction between the businesses' Personnel and customers occur in the outdoors. Businesses that involve outdoor interactions carry a lower risk of transmission than most indoor businesses. Also, outdoor museums should result in a limited increase in the number of people reentering the workforce and the overall volume of commercial activity and mitigation measures can meaningfully decrease the resulting public health risk.
- b. Description and Additional Conditions to Operate. Outdoor Museums are a museum where the exhibitions are located outdoors, and are permitted to operate subject to the additional stated limitations and conditions:
 - i. Personnel and customers must at all times wear a face covering; and
 - ii. Any indoor components of the museum must remain closed to the public.

(4) Offices

- a. Basis for Addition. The State of California has determined that it would be appropriate to allow Offices to resume operation. In addition, opening Offices should result in a limited increase in the number of people reentering the workforce because the Order still requires that businesses assign only those who cannot perform their job duties from home to work outside the home, and the overall volume of commercial activity and mitigation measures can meaningfully decrease the resulting public health risk.
- b. Description and Additional Conditions to Operate. For a business that is not an Essential Business, an Outdoor Business, nor an Additional Business, the business may open its Offices but only to the extent that persons working in these Offices cannot perform their job duties from home, and any such business operating Offices must ensure that there is minimal contact with members of the public, no indoor person-to-person commercial activity, and must adhere to Social Distancing Requirements and the Face Covering Order.



(5) State Identified Essential Business

- a. Basis for Addition. Any business that the State of California has identified as an essential critical infrastructure sector (available at: <https://covid19.ca.gov/essential-workforce/>) can resume operation carried out by its essential workforce. The operation of these Additional Businesses should result in a limited increase in the number of people reentering the workforce because the Order has previously identified twenty-six Essential Businesses and the Order requires that businesses assign only those who cannot perform their job duties from home to work outside the home.

(6) Places of Worship

- a. Basis for Addition. In-person services at places of worship that are actively managed and monitored in a manner that ensures that social distancing, face covering and all other requirements, including Health Officer orders, are enforced, the likelihood of transmission is significantly reduced. In addition, the State of California has determined that it would be appropriate to allow these businesses to resume operation.
- b. Description and Conditions. In addition to following all state guidance and guidance released by the Centers for Disease Control and Prevention (available at <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/index.html>), which is hereby incorporated by reference and made a requirement, places of worship may resume in-person services if its Social Distancing Protocol also explains how the place of worship is achieving the following:
 - i. Vulnerable staff (those above age 50 or those with chronic health conditions) are assigned to work that can be done from home when feasible;
 - ii. Vulnerable congregants (those above age 50 or those with chronic health conditions) are strongly discouraged from participating in in-person services and strongly encouraged to participate virtually;
 - iii. Work processes are reconfigured to the extent possible to increase opportunities for staff to work from home;
 - iv. Attendance at religious services and cultural ceremonies at the house of worship is limited to a maximum of 25% of building capacity or 100 individuals, whichever is lower. This limitation on attendance will be reviewed by the State of California at least once every 21 days, beginning May 25, 2020. The State of California has indicated it will assess the impacts of these imposed limits on public health and provide further direction as part of a phased-in restoration of activities in places of worship. Following any change by the State of California, the Health Officer will consider further changes as well;
 - v. Persons are prohibited from eating or drinking anywhere inside the place of worship;
 - vi. If restrooms are open, the restroom will be cleaned between uses;
 - vii. Where lines may form at the entry and exits of the place of worship, marking six-foot increments at a minimum to establish where individuals should stand to maintain adequate social distancing;
 - viii. Aisles in the place of worship are designated as one-way to support social distancing;
 - ix. Children must remain in the care of those in their household/living unit and not interact with children of other parties at all times while visiting facilities. Additionally, places of worship must discontinue activities and services for children (including, for example, shared play areas) where social distancing of at least six feet cannot be maintained; and
 - x. Prohibiting after service gatherings.