

# EXHIBIT 1



STATE OF MICHIGAN

GRETCHEN WHITMER  
GOVERNOR

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
LANSING

ROBERT GORDON  
DIRECTOR

November 15, 2020

### Emergency Order under MCL 333.2253 – Gatherings and Face Mask Order

Michigan law imposes on the Michigan Department of Health and Human Services (MDHHS) a duty to continually and diligently endeavor to “prevent disease, prolong life, and promote public health,” and gives the Department “general supervision of the interests of health and life of people of this state.” MCL 333.2221. MDHHS may “[e]xercise authority and promulgate rules to safeguard properly the public health; to prevent the spread of diseases and the existence of sources of contamination; and to implement and carry out the powers and duties vested by law in the department.” MCL 333.2226(d).

The novel coronavirus (COVID-19) is a respiratory disease that can result in serious illness or death. It is caused by a new strain of coronavirus not previously identified in humans and easily spread from person to person. There is currently no approved vaccine for this disease. COVID-19 spreads through close human contact, even from individuals who may be asymptomatic.

In recognition of the severe, widespread harm caused by epidemics, the Legislature has granted MDHHS specific authority, dating back a century, to address threats to the public health like those posed by COVID-19. MCL 333.2253(1) provides that “[i]f the director determines that control of an epidemic is necessary to protect the public health, the director by emergency order may prohibit the gathering of people for any purpose and may establish procedures to be followed during the epidemic to insure continuation of essential public health services and enforcement of health laws. Emergency procedures shall not be limited to this code.” See also *In re Certified Questions*, Docket No. 161492 (Viviano, J., concurring in part and dissenting in part, at 20) (“[T]he 1919 law passed in the wake of the influenza epidemic and Governor Sleeper’s actions is still the law, albeit in slightly modified form.”); *id.* (McCormack, C.J., dissenting, at 12). Enforcing Michigan’s health laws, including preventing disease, prolonging life, and promoting public health, requires limitations on gatherings and the establishment of procedures to control the spread of COVID-19. This includes limiting the number, location, size, and type of gatherings, and requiring the use of mitigation measures at gatherings as a condition of hosting such gatherings.

On March 10, 2020, MDHHS identified the first two presumptive-positive cases of COVID-19 in Michigan. As of November 13, 2020, Michigan had seen 244,741 confirmed cases and 7,929 confirmed deaths attributable to COVID-19. Michigan was one of the states most heavily impacted by COVID-19 early in the pandemic, with new cases peaking at nearly 2,000 per day in late March. Strict preventative measures and the cooperation of Michiganders drove daily case numbers dramatically down to less than 200 confirmed cases in mid-June, greatly reducing the loss of life. Since October, Michigan has seen an exponential growth in cases. Daily new cases are now over 6,000 which is three times higher than what was seen in the spring.

The State of Michigan presently has a seven-day average of 512 cases per million people, which is five times higher than the case rate on October 1. Test positivity has increased from 3.2% in early October to 12% on November 13. And while testing has increased 78% since October 1, test positivity has increased 225% during that same time frame, indicating COVID-19 spread is happening much more quickly than tests being administered. All regions in Michigan are now at the highest risk level, with seven-day averages in excess of 150 cases per million residents. Rising cases creates significant pressure on our

emergency and hospital systems. Complaints of coronavirus-like illness in emergency departments increased for the ninth week in a row for the state. Hospitalizations for COVID-19 have doubled in less than two weeks, and there are now over 4.5 times the hospitalizations recorded on October 1. An average of 363 daily hospital admissions were seen in Michigan in the last week, and with individuals under 60 years old accounting for nearly half of all new hospital admissions. With over 3,000 Michiganders hospitalized for COVID-19, 15% of all available inpatient beds are now occupied by patients who have COVID-19, the highest number since mid-April. The state death rate is 5 deaths per million people and continues to increase. The current death rate is four times higher than it was in early October. There are more than 300 weekly deaths in Michigan and nearly every region has more than 20 weekly deaths. Due to delays between exposure, onset of symptoms, and hospitalization, the sharp rise in new infections suggests that the state is entering the most challenging phase of the pandemic thus far.

To protect vulnerable individuals, ensure the health care system can provide care for all health issues, and prevent spread in schools during the influenza season, we must reduce the spread of COVID-19. This necessitates use of more forceful mitigation techniques to reduce the spread of the virus. As such, it is necessary to issue orders under the Public Health Code addressing these topics.

Considering the above, and upon the advice of scientific and medical experts, I have concluded pursuant to MCL 333.2253 that the COVID-19 pandemic continues to constitute an epidemic in Michigan. I have also, subject to the grant of authority in 2020 PA 238 (signed into law on October 22, 2020), herein defined the symptoms of COVID-19 based on the latest epidemiological evidence. I further conclude that control of the epidemic is necessary to protect the public health and that it is necessary to restrict gatherings and establish procedures to be followed during the epidemic to ensure the continuation of essential public health services and enforcement of health laws. As provided in MCL 333.2253, these emergency procedures are not limited to the Public Health Code.

I therefore order that:

**1. Definitions.**

- (a) "Child-care organization" means that term as defined by section 1(b) of the Child Care Organizations Act, 1973 PA 116, as amended, MCL 722.111(b)) and day, residential, travel, and troop camps for children (as defined by Rule 400.11101(1)(q) of the Michigan Administrative Code).
- (b) "Face mask" means a tightly woven cloth or other multi-layer absorbent material that closely covers an individual's mouth and nose.
- (c) "Food service establishment" means that term as defined in section 1107(t) of the Food Law, 2000 PA 92, as amended, MCL 289.1107(t).
- (d) "Employee" means that term as defined in section 2 of the Improved Workforce Opportunity Wage Act, 2018 PA 337, as amended, MCL 408.932, and also includes independent contractors.
- (e) "Gathering" means any occurrence, either indoor or outdoor, where two or more persons from more than one household are present in a shared space.
- (f) "Household" means a group of persons living together in a shared dwelling with common kitchen or bathroom facilities. In dwellings with shared kitchen or bathroom facilities occupied by 20 or more unrelated persons, households are defined by individuals who share a bedroom.
- (g) "Organized sports" means competitive athletic activity requiring skill or physical prowess and organized by a sports organizer.

- (h) "Sports Organizer" means an institution, association, or other organization that sets and enforces rules to ensure the physical health and safety of all participants for an organized sport.
- (i) "Exercise facility" means a location in which individuals participate in individual or group physical activity, including gymnasiums, fitness centers, and exercise studios.
- (j) "Symptoms of COVID-19" means at least 1 of fever, uncontrolled cough, or atypical new onset of shortness of breath, or at least 2 of the following not explained by a known physical condition: loss of taste or smell, muscle aches, sore throat, severe headache, diarrhea, vomiting, or abdominal pain. Per section 1(h) of 2020 PA 238, this definition represents the latest medical guidance, and serves as the controlling definition.

## 2. General capacity limitations at gatherings.

### (a) Indoor gatherings:

- (1) Are prohibited at residential venues, except where no more than 10 persons from no more than 2 households are gathered. Such gatherings should be held consistent with guidance issued by the Department of Health and Human Services for such gatherings;
- (2) Are prohibited at non-residential venues.

### (b) Outdoor gatherings are permitted only as follows:

- (1) At residential venues, 25 or fewer persons are gathered, comprised of no more than 3 households;
- (2) At non-residential venues:
  - (A) 25 or fewer persons are gathered at a venue without fixed seating, and attendance is limited to 20 persons per 1,000 square feet, including within any distinct area within the event space;
  - (B) 25 or fewer persons are gathered at a venue with fixed seating, and attendance is limited to 20% of seating capacity of the venue.

### (c) The limitations to gatherings in sections 2(a) and 2(b) do not apply to:

- (1) Incidental, temporary gatherings of persons in a shared space, such as frequently occur in an airport, bus station, exercise facility, food service establishment, shopping mall, or public pool, except as prohibited in section 3;
- (2) Gatherings between an employee and a customer for the purpose of receiving services;
- (3) Workplace gatherings that occur consistent with the Emergency Rules issued by MIOSHA on October 14, 2020;
- (4) Voting or official election-related activities;
- (5) Training of law enforcement, correctional, medical, or first responder personnel, insofar as those activities cannot be conducted remotely;

- (6) Education and support services at public, nonpublic, and boarding schools serving students in prekindergarten through grade 8;
  - (7) Children in a child-care organization or camp setting;
  - (8) Persons traveling on a school bus or other public transit;
  - (9) Gatherings for the purpose of medical treatment, including mental health and substance use disorder support services;
  - (10) Gatherings of up to 25 persons for the purpose of a funeral;
  - (11) Residential care facilities, which are subject to the October 21 epidemic order entitled "Requirements for Residential Facilities," or any replacement of that order.
- (d) As a condition of hosting a gathering under this order, organizers and venues must design the gathering to encourage and maintain physical distancing, and must ensure that persons not part of the same household maintain 6 feet of distance from one another to the extent possible.

**3. Gathering restrictions for particular types of facilities.**

- (a) Gatherings, are prohibited in the following settings:
  - (1) Entertainment venues, including: auditoriums; arenas; banquet halls; cinemas; conference centers; concert halls; performance venues; sporting venues; stadiums; and theaters;
  - (2) Recreational facilities and places of public amusement, including: amusement parks; arcades; bingo halls; bowling alleys; casinos; night clubs; skating rinks; strip clubs; water parks; and trampoline parks;
- (b) Gatherings are permitted at food service establishments under the following conditions:
  - (1) Persons are not gathered indoors except in custodial settings, medical facilities, school and university cafeterias, shelters, and soup kitchens. If attendees are seated at tables, persons must be 6 feet apart, or members of a household may share a table and tables must be spaced a minimum of 6 feet apart;
  - (2) Persons participating in outdoor dining are seated no more than 6 to a table and tables are spaced a minimum of 6 feet apart.
- (c) Nothing in this section shall be construed to prohibit the use of these facilities for public health or other emergency purposes.

**4. Gathering restrictions for facilities.** In addition to the gathering limitations set forth elsewhere in this order, the following limitations apply to gatherings in the following facilities:

- (a) A gathering at a retail store, library, or museum must not exceed 30% of total occupancy limits established by the State Fire Marshal or a local fire marshal. Nevertheless, a retail store, library, or museum may permit one customer at a time to enter if strict adherence to the 30% total occupancy limit would otherwise result in closure.

- (1) Retail stores must establish lines to regulate entry and checkout, with markings for patrons to enable them to stand at least six feet apart from one another while waiting.
- (b) At exercise facilities:
  - (1) Gatherings must not exceed 25% of the total occupancy limits established by the State Fire Marshal or a local fire marshal; and
  - (2) There must be at least 12 feet of distance between each occupied workout station;
  - (3) Gatherings for group fitness activities or classes are prohibited.
- (c) Gatherings in waiting rooms at outpatient health-care facilities, veterinary clinics, and other businesses are prohibited unless the facility implements a system to ensure that persons not of the same household maintain 6 feet of distance. To the extent possible, this system must include a policy that patients wait in their cars for their appointments to be called.
- (d) A gathering at an indoor or outdoor pool not otherwise prohibited by this order must not exceed 25% of bather capacity limits described in Rule 325.2193 of the Michigan Administrative Code.
- (e) In facilities offering non-essential personal care services, including hair, nail, tanning, massage, traditional spa, tattoo, body art, and piercing services, and similar personal care services, gatherings are only permitted to the extent that services do not involve the removal of face masks. All services must be provided by appointment, and gatherings in waiting areas are prohibited.

#### **5. Schools, colleges, and universities.**

- (a) Gatherings at public, nonpublic, and boarding schools for the purpose of conducting in-person instruction, sports, and extracurricular activities serving pupils in grades 9 through 12 are prohibited, except for in-person instruction of pupils who are English Language Learners or participants in special education services;
- (b) Gatherings at public, nonpublic, and boarding schools for the purpose of conducting in-person instruction of pupils in prekindergarten through grade 8 are permitted, subject to local health department and school district decisions on remote learning. Gatherings for the purpose of sports and extracurricular activity are prohibited;
- (c) Gatherings at public, nonpublic, and boarding schools are permitted for the purpose of providing services to students in need, including food distribution, access to internet connectivity, physical and mental health care services, and child care;
- (d) Gatherings at colleges and universities are prohibited for the purpose of holding in-person classes, extracurricular events, or other events are prohibited, except as permitted in sections 2 and 6 of this order.

#### **6. Organized sports gathering restrictions.**

- (a) Gatherings for the purpose of organized sports are prohibited unless all participants, teams, and venues comply with the enhanced testing regimen specified in the Additional Mitigation Measures for Safer Athletic Practice and Play without the use of Face Coverings section of MDHHS guidance on Additional Measures for Safer Athletic Practice and Play.

Sports organizers complying with this section may host gatherings for the purpose of practice and competition notwithstanding the gathering prohibitions in sections 2 and 5(c).

(b) Sports organizers may not permit gatherings of spectators.

**7. Face mask requirement at gatherings.**

(a) All persons participating in gatherings are required to wear a face mask.

(b) As a condition of gathering for the purpose of transportation, transportation providers must require all staff and patrons to use face masks, and must enforce physical distancing among all patrons to the extent feasible.

(c) Except as provided elsewhere in this order, a person responsible for a business, store, office, government office, school, organized event, or other operation, or an agent of such person, must prohibit gatherings of any kind unless the person requires individuals in such gatherings (including employees) to wear a face mask, and denies entry or service to all persons refusing to wear face masks while gathered.

(d) A person responsible for a business, store, office, government office, school, organized event, or other operation, or an agent of such person, may not assume that someone who enters the facility without a face mask falls within one of the exceptions specified in section 8 of this order, including the exception for individuals who cannot medically tolerate a face mask. An individual's verbal representation that they are not wearing a face mask because they fall within a specified exception, however, may be accepted.

(e) A person responsible for a child-care organization or camp, or an agent of such person, must not allow gatherings unless face masks are worn by all staff. Children must wear face masks as indicated below:

(1) All children 2 years and older when on a school bus or other transportation provided by the child-care organization or camp;

(2) All children 4 years and older when in indoor hallways and indoor common areas;

(3) All children 5 years and older when in classrooms, homes, cabins, or similar indoor settings.

**8. Exceptions to face mask requirements.** Although a face mask is strongly encouraged even for individuals not required to wear one (except for children under the age of 2), the requirement to wear a face mask in gatherings as required by this order does not apply to individuals who:

(a) Are younger than 5 years old, outside of child-care organization setting (which are subject to requirements set out in section 7(e));

(b) Cannot medically tolerate a face mask;

(c) Are eating or drinking while seated at a food service establishment or at a private residence;

(d) Are exercising outdoors and able to consistently maintain 6 feet of distance from others;

(e) Are swimming;

(f) Are receiving a medical service for which removal of the face mask is necessary;

- (g) Are asked to temporarily remove a face mask for identification purposes;
- (h) Are communicating with someone who is deaf, deafblind, or hard of hearing and whose ability to see the mouth is essential to communication;
- (i) Are actively engaged in a public safety role, including but not limited to law enforcement, firefighters, or emergency medical personnel, and where wearing a face mask would seriously interfere in the performance of their public safety responsibilities;
- (j) Are at a polling place for purposes of voting in an election;
- (k) Are engaging in a religious service; or
- (l) Are giving a speech for broadcast or to an audience, provided that the audience is at least 6 feet away from the speaker.

**9. Contact tracing requirements for particular gatherings.**

- (a) Gatherings are prohibited at the following facilities unless the facility maintains accurate records, including date and time of entry, names of patrons, and contact information, to aid with contact tracing, and denies entry for a gathering to any visitor who does not provide, at a minimum, their name and phone number:
  - (1) All businesses or operations that provide barbering, cosmetology services, body art services (including tattooing and body piercing), tanning services, massage services, or similar personal care services;
  - (2) Exercise facilities.
- (b) All businesses or operations that provide in-home services, including cleaners, repair persons, painters, and the like must not permit their employees to gather with clients unless the business maintains accurate appointment records, including date and time of service, name of client, and contact information, to aid with contact tracing.
- (c) Upon request, businesses, schools, and other facilities must provide names and phone numbers of individuals with possible COVID-19 exposure to MDHHS and local health departments to aid in contact tracing and case investigation efforts.
- (d) Data collected under this section:
  - (1) Must not be sold, or used for sales or marketing purposes without the express consent of each patron;
  - (2) Must be protected as confidential information to the fullest extent of the law;
  - (3) Must not be provided to law enforcement or immigration officials except upon receipt of a lawful subpoena from a court or other lawful court order;
  - (4) Must be retained for 28 days by the collecting organization, after which time the data must be destroyed. If facilities use existing data to fulfill this requirement, they may instead follow their own pre-existing data retention and destruction policies at the conclusion of the 28-day retention period.




## 10. Implementation.

- (a) Nothing in this order modifies, limits, or abridges protections provided by state or federal law for a person with a disability.
- (b) Under MCL 333.2235(1), local health departments are authorized to carry out and enforce the terms of this order.
- (c) Law enforcement officers, as defined in the Michigan Commission on Law Enforcement Standards Act, 1965 Public Act 203, MCL 28.602(f), are deemed to be "department representatives" for purposes of enforcing this order, and are specifically authorized to investigate potential violations of this order. They may coordinate as necessary with the appropriate regulatory entity and enforce this order within their jurisdiction.
- (d) Neither a place of religious worship nor its owner is subject to penalty under this order for allowing religious worship at such place. No individual is subject to penalty under this order for engaging in religious worship at a place of religious worship.
- (e) Consistent with MCL 333.2261, violation of this order is a misdemeanor punishable by imprisonment for not more than 6 months, or a fine of not more than \$200.00, or both.
- (f) Nothing in this order affects any prosecution or civil citation based on conduct that occurred before the effective date of this order.
- (g) Nothing in this order should be taken to interfere with or infringe on the powers of the legislative and judicial branches to perform their constitutional duties or exercise their authority, or protections guaranteed by the state or federal constitution under these emergency circumstances.
- (h) Consistent with any rule or emergency rule promulgated and adopted in a schedule of monetary civil penalties under MCL 333.2262(1) and applicable to this order, violations of this order are also punishable by a civil fine of up to \$1,000 for each violation or day that a violation continues.
- (i) If any provision of this order is found invalid by a court of competent jurisdiction, whether in whole or in part, such decision will not affect the validity of the remaining part of this order.
- (j) It is not a violation of this order for a person to enter a facility otherwise closed for gatherings if they are entering solely for the purpose of using restroom facilities.

This order takes effect on November 18, 2020 at 12:01 AM, at which time the October 29, 2020, order entitled Gatherings and Face Mask Order is rescinded. This order remains in effect through December 8, 2020 at 11:59 PM. Persons with suggestions and concerns are invited to submit their comments via email to [COVID19@michigan.gov](mailto:COVID19@michigan.gov).

Date: November 15, 2020



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Robert Gordon, Director

Michigan Department of Health and Human Services



STATE OF MICHIGAN

GRETCHEN WHITMER  
GOVERNOR

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
LANSING

ROBERT GORDON  
DIRECTOR

December 7, 2020

### Emergency Order under MCL 333.2253 – Gatherings and Face Mask Order

Michigan law imposes on the Michigan Department of Health and Human Services (MDHHS) a duty to continually and diligently endeavor to “prevent disease, prolong life, and promote public health,” and gives the Department “general supervision of the interests of health and life of people of this state.” MCL 333.2221. MDHHS may “[e]xercise authority and promulgate rules to safeguard properly the public health; to prevent the spread of diseases and the existence of sources of contamination; and to implement and carry out the powers and duties vested by law in the department.” MCL 333.2226(d).

The novel coronavirus (COVID-19) is a respiratory disease that can result in serious illness or death. It is caused by a new strain of coronavirus not previously identified in humans and easily spread from person to person. There is currently no approved vaccine for this disease. COVID-19 spreads through close human contact, even from individuals who may be asymptomatic.

In recognition of the severe, widespread harm caused by epidemics, the Legislature has granted MDHHS specific authority, dating back a century, to address threats to the public health like those posed by COVID-19. MCL 333.2253(1) provides that “[i]f the director determines that control of an epidemic is necessary to protect the public health, the director by emergency order may prohibit the gathering of people for any purpose and may establish procedures to be followed during the epidemic to insure continuation of essential public health services and enforcement of health laws. Emergency procedures shall not be limited to this code.” See also *In re Certified Questions*, Docket No. 161492 (Viviano, J., concurring in part and dissenting in part, at 20) (“[T]he 1919 law passed in the wake of the influenza epidemic and Governor Sleeper’s actions is still the law, albeit in slightly modified form.”); *id.* (McCormack, C.J., dissenting, at 12). Enforcing Michigan’s health laws, including preventing disease, prolonging life, and promoting public health, requires limitations on gatherings and the establishment of procedures to control the spread of COVID-19. This includes limiting the number, location, size, and type of gatherings, and requiring the use of mitigation measures at gatherings as a condition of hosting such gatherings.

On March 10, 2020, MDHHS identified the first two presumptive-positive cases of COVID-19 in Michigan. As of December 6, 2020, Michigan had seen 395,036 confirmed cases and 6,004 confirmed deaths attributable to COVID-19. Michigan was one of the states most heavily impacted by COVID-19 early in the pandemic, with new cases peaking at nearly 2,000 per day in late March. Strict preventative measures and the cooperation of Michiganders drove daily case numbers dramatically down to less than 200 confirmed cases per day in mid-June, greatly reducing the loss of life. Beginning in October, Michigan again experienced an exponential growth in cases. Daily new cases are now over 5,000, which is roughly three times higher than what was seen in the spring.

On November 15, 2020, MDHHS issued an order to slow the high and rapidly increasing rate of spread of COVID-19. While the rate of spread has been reduced, there are still tremendously high numbers of cases, hospitalizations, and deaths, which threaten hospital and public health capacity. As changes in data lag behind changes in policy by several weeks, it is difficult to determine at this time whether the order has sufficiently reduced the rate of spread. This is particularly true where travel and gatherings for the Thanksgiving holiday are applying upward pressure on the rate of spread.

The State of Michigan presently has a seven-day average of 522.3 cases per million people, which is five times higher than the case rate on October 1. Test positivity has increased from 3.2% in early October to 14% on December 5. Rising cases create significant pressure on our emergency and hospital systems. Although complaints of coronavirus-like illness in emergency departments are now starting to decrease for the state, the current rate remains near the all-time high, and is four times higher than early October. An average of 500 daily hospital admissions were seen in Michigan in the last week, with individuals under 60 years old accounting for almost a third of all new admissions. With over 4,000 Michiganders hospitalized for COVID-19, 18% of all available inpatient beds are now occupied by patients who have COVID-19, the highest number since mid-April. The state death rate is 9.1 deaths per million people and continues to increase. The death rate is seven times higher than it was in early October, and there are more than 650 weekly deaths in Michigan. We must act to control the high rate of spread in order to save lives as we push through this difficult phase of the pandemic, and await widespread distribution of an effective COVID-19 vaccine.

To protect vulnerable individuals, ensure the health care system can provide care for all health issues, and prevent spread in schools during the influenza season, we must reduce the spread of COVID-19. This necessitates use of more forceful mitigation techniques to reduce the spread of the virus. As such, it is necessary to issue orders under the Public Health Code addressing these topics.

Considering the above, and upon the advice of scientific and medical experts, I have concluded pursuant to MCL 333.2253 that the COVID-19 pandemic continues to constitute an epidemic in Michigan. I have also, subject to the grant of authority in 2020 PA 238 (signed into law on October 22, 2020), herein defined the symptoms of COVID-19 based on the latest epidemiological evidence. I further conclude that control of the epidemic is necessary to protect the public health and that it is necessary to restrict gatherings and establish procedures to be followed during the epidemic to ensure the continuation of essential public health services and enforcement of health laws. As provided in MCL 333.2253, these emergency procedures are not limited to the Public Health Code.

I therefore order that:

**1. Definitions.**

- (a) "Child-care organization" means that term as defined by section 1(b) of the Child Care Organizations Act, 1973 PA 116, as amended, MCL 722.111(b) and day, residential, travel, and troop camps for children (as defined by Rule 400.11101(1)(q) of the Michigan Administrative Code).
- (b) "Closed-campus boarding school" means a boarding school, as defined in section 3 of the Revised School Code, 1976 PA 451, as amended, MCL 380.3(4), where at least 90 percent of students reside on campus, and are prohibited from travel off campus property during the term, the campus is closed to visitors, and all staff and students who travel to and from the campus are regularly tested for COVID-19.
- (c) "Employee" means that term as defined in section 2 of the Improved Workforce Opportunity Wage Act, 2018 PA 337, as amended, MCL 408.932, and also includes independent contractors.
- (d) "Exercise facility" means a location in which individuals participate in individual or group physical activity, including gymnasiums, fitness centers, and exercise studios.
- (e) "Face mask" means a tightly woven cloth or other multi-layer absorbent material that closely covers an individual's mouth and nose.
- (f) "Food service establishment" means that term as defined in section 1107(t) of the Food Law, 2000 PA 92, as amended, MCL 289.1107(t).

- (g) "Gathering" means any occurrence, either indoor or outdoor, where two or more persons from more than one household are present in a shared space.
- (h) "Household" means a group of persons living together in a shared dwelling with common kitchen or bathroom facilities. In dwellings with shared kitchen or bathroom facilities occupied by 20 or more unrelated persons, households are defined by individuals who share a bedroom.
- (i) "Indoors" means within a space that is fully or partially enclosed on the top, and fully or partially enclosed on two or more contiguous sides. Additionally, in a space that is fully or partially enclosed on the top, and fully or partially enclosed on two non-contiguous sides, any part of that space that is more than 8 feet from an open side is indoors.
- (j) "Outdoors" means a space that is not indoors.
- (k) "Organized sports" means competitive athletic activity requiring skill or physical prowess and organized by a sports organizer.
- (l) "Sports Organizer" means an institution, association, or other organization that sets and enforces rules to ensure the physical health and safety of all participants for an organized sport.
- (m) "Symptoms of COVID-19" means at least 1 of fever, uncontrolled cough, or atypical new onset of shortness of breath, or at least 2 of the following not explained by a known physical condition: loss of taste or smell, muscle aches, sore throat, severe headache, diarrhea, vomiting, or abdominal pain. Per section 1(h) of 2020 PA 238, this definition represents the latest medical guidance, and serves as the controlling definition.

**2. General capacity limitations at gatherings.**

(a) Indoor gatherings:

- (1) Are prohibited at residential venues, except where no more than 10 persons from no more than 2 households are gathered. Such gatherings should be held consistent with guidance issued by the Department of Health and Human Services for such gatherings;
- (2) Are prohibited at non-residential venues.

(b) Outdoor gatherings are permitted only as follows:

- (1) At residential venues, 25 or fewer persons are gathered, comprised of no more than 3 households;
- (2) At non-residential venues:
  - (A) 25 or fewer persons are gathered at a venue without fixed seating, and attendance is limited to 20 persons per 1,000 square feet, including within any distinct area within the event space;
  - (B) 25 or fewer persons are gathered at a venue with fixed seating, and attendance is limited to 20% of seating capacity of the venue.

(c) The limitations to gatherings in sections 2(a) and 2(b) do not apply to:

- (1) Incidental, temporary gatherings of persons in a shared space, such as frequently occur in an airport, bus station, exercise facility, food service establishment, shopping mall, or public pool, except as prohibited in section 3;
  - (2) Gatherings between an employee and a customer for the purpose of receiving services;
  - (3) Workplace gatherings that occur consistent with the Emergency Rules issued by MIOSHA on October 14, 2020;
  - (4) Voting or official election-related activities;
  - (5) Training of law enforcement, correctional, medical, or first responder personnel, insofar as those activities cannot be conducted remotely;
  - (6) Education and support services at public, nonpublic, and boarding schools serving students in prekindergarten through grade 8;
  - (7) Children in a child-care organization, after school program, or camp setting;
  - (8) Persons traveling on a school bus or other public transit;
  - (9) Gatherings for the purpose of medical treatment, including mental health and substance use disorder support services;
  - (10) Gatherings of up to 25 persons for the purpose of a funeral;
  - (11) Residential care facilities, which are subject to the October 21 epidemic order entitled "Requirements for Residential Facilities," or any replacement of that order;
  - (12) Cardiopulmonary resuscitation courses and swimming instruction courses;
  - (13) Proctored, nationally-administered admissions and certification examinations that are not available remotely, provided that examinees are spaced no less than 12 feet apart.
- (d) As a condition of hosting a gathering under this order, organizers and venues must design the gathering to encourage and maintain physical distancing, and must ensure that persons not part of the same household maintain 6 feet of distance from one another to the extent possible.

### **3. Gathering restrictions for particular types of facilities.**

- (a) Gatherings, are prohibited in the following settings:
  - (1) Entertainment venues, including: auditoriums; arenas; banquet halls; cinemas; conference centers; concert halls; performance venues; sporting venues; stadiums; and theaters;
  - (2) Recreational facilities and places of public amusement, including: amusement parks; arcades; bingo halls; bowling alleys; casinos; night clubs; roller rinks; strip clubs; water parks; and trampoline parks;
- (b) Gatherings are permitted at food service establishments under the following conditions:

- (1) Persons are not gathered indoors except in custodial settings, medical facilities, school and university cafeterias, shelters, and soup kitchens. If attendees are seated at tables, persons must be 6 feet apart, or members of a household may share a table and tables must be spaced a minimum of 6 feet apart;
    - (2) Persons participating in outdoor dining are seated no more than 6 to a table and tables are spaced a minimum of 6 feet apart;
  - (c) Nothing in this section shall be construed to prohibit the use of these facilities for public health or other emergency purposes.
4. **Gathering restrictions for facilities.** In addition to the gathering limitations set forth elsewhere in this order, the following limitations apply to gatherings in the following facilities:
  - (a) A gathering at a retail store, library, or museum must not exceed 30% of total occupancy limits established by the State Fire Marshal or a local fire marshal. Nevertheless, a retail store, library, or museum may permit one customer at a time to enter if strict adherence to the 30% total occupancy limit would otherwise result in closure. Spaces for indoor dining, including food courts, must be closed.
    - (1) Retail stores must establish lines to regulate entry and checkout, with markings for patrons to enable them to stand at least six feet apart from one another while waiting.
  - (b) At exercise facilities:
    - (1) Gatherings must not exceed 25% of the total occupancy limits established by the State Fire Marshal or a local fire marshal; and
    - (2) There must be at least 12 feet of distance between each occupied workout station;
    - (3) Gatherings for group fitness activities or classes are prohibited.
  - (c) Gatherings in waiting rooms at outpatient health-care facilities, veterinary clinics, and other businesses are prohibited unless the facility implements a system to ensure that persons not of the same household maintain 6 feet of distance. To the extent possible, this system must include a policy that patients wait in their cars for their appointments to be called.
  - (d) Gatherings at an indoor or outdoor pool not otherwise prohibited by this order must not exceed 25% of bather capacity limits described in Rule 325.2193 of the Michigan Administrative Code.
  - (e) Gatherings at indoor and outdoor ice skating rinks are prohibited, except for individual exercise or one-on-one instruction, and occupancy is limited to 20 persons per 1,000 square feet, including within the exercise space. Gatherings for the purpose of open skating are permitted only at outdoor rinks.
  - (f) In facilities offering non-essential personal care services, including hair, nail, tanning, massage, traditional spa, tattoo, body art, and piercing services, and similar personal care services, gatherings are only permitted to the extent that services do not involve the removal of face masks. All services must be provided by appointment, and gatherings in waiting areas are prohibited.
5. **Schools, colleges, technical schools, and universities.**

- (a) Gatherings at public and nonpublic schools for the purpose of conducting in-person instruction, sports, and extracurricular activities serving pupils in grades 9 through 12 are prohibited, except for in-person instruction of pupils who are English Language Learners or participants in special education services, or as provided in sections 5(d), and 5(g);
- (b) Gatherings at public and nonpublic schools for the purpose of conducting in-person instruction of pupils in prekindergarten through grade 8 are permitted, subject to local health department and school district decisions on remote learning. Gatherings for the purpose of sports and extracurricular activity are prohibited;
- (c) Gatherings at public and nonpublic school are permitted for the purpose of child care programs, tutoring and academic support, and for providing services to students in need, including food distribution, access to internet connectivity, physical and mental health care services;
- (d) Gatherings at closed-campus boarding schools for the purpose of conducting in-person instruction are permitted, subject to local health department and school district decisions on remote learning.
- (e) Gatherings at colleges and universities, trade schools, and career schools, are prohibited for the purpose of holding in-person classes, extracurricular events, or other events, except as permitted in sections 2, 5(f), 5(g), and 6 of this order.
- (f) Gatherings at trade schools and career schools are permitted for the purpose of providing technical education services, including manufacturing, industrial technology, trades, and cosmetology, but only to the extent that these activities cannot be completed remotely.
- (g) Gatherings at public and nonpublic schools for the purpose of delivering career and technical education services to pupils in grades 9 through 12 are permitted, but only to the extent that these activities are necessary to complete requirements for a recognized postsecondary credential and only to the extent that these activities cannot be completed remotely.

**6. Organized sports gathering restrictions.**

- (a) Gatherings for the purpose of organized sports are prohibited unless all participants, teams, and venues comply with the enhanced testing regimen specified in the Additional Mitigation Measures for Safer Athletic Practice and Play without the use of Face Coverings section of MDHHS guidance on Additional Measures for Safer Athletic Practice and Play. Sports organizers complying with this section may host gatherings for the purpose of practice and competition notwithstanding the gathering prohibitions in sections 2 and 5(e).
- (b) Sports organizers may not permit gatherings of spectators.

**7. Face mask requirement at gatherings.**

- (a) All persons participating in gatherings are required to wear a face mask.
- (b) As a condition of gathering for the purpose of transportation, transportation providers must require all staff and patrons to use face masks, and must enforce physical distancing among all patrons to the extent feasible.
- (c) Except as provided elsewhere in this order, a person responsible for a business, store, office, government office, school, organized event, or other operation, or an agent of such person, must prohibit gatherings of any kind unless the person requires individuals in such

gatherings (including employees) to wear a face mask, and denies entry or service to all persons refusing to wear face masks while gathered.

- (d) A person responsible for a business, store, office, government office, school, organized event, or other operation, or an agent of such person, may not assume that someone who enters the facility without a face mask falls within one of the exceptions specified in section 8 of this order, including the exception for individuals who cannot medically tolerate a face mask. An individual's verbal representation that they are not wearing a face mask because they fall within a specified exception, however, may be accepted.
- (e) A person responsible for a child-care organization or camp, or an agent of such person, must not allow gatherings unless face masks are worn by all staff. Children must wear face masks as indicated below:

- (1) All children 2 years and older when on a school bus or other transportation provided by the child-care organization or camp;
- (2) All children 4 years and older when in indoor hallways and indoor common areas;
- (3) All children 5 years and older when in classrooms, homes, cabins, or similar indoor settings.

8. **Exceptions to face mask requirements.** Although a face mask is strongly encouraged even for individuals not required to wear one (except for children under the age of 2), the requirement to wear a face mask in gatherings as required by this order does not apply to individuals who:

- (a) Are younger than 5 years old, outside of child-care organization setting (which are subject to requirements set out in section 7(e));
- (b) Cannot medically tolerate a face mask;
- (c) Are eating or drinking while seated at a food service establishment or at a private residence;
- (d) Are exercising outdoors and able to consistently maintain 6 feet of distance from others;
- (e) Are swimming;
- (f) Are receiving a medical service for which removal of the face mask is necessary;
- (g) Are asked to temporarily remove a face mask for identification purposes;
- (h) Are communicating with someone who is deaf, deafblind, or hard of hearing and whose ability to see the mouth is essential to communication;
- (i) Are actively engaged in a public safety role, including but not limited to law enforcement, firefighters, or emergency medical personnel, and where wearing a face mask would seriously interfere in the performance of their public safety responsibilities;
- (j) Are at a polling place for purposes of voting in an election;
- (k) Are engaging in a religious service; or
- (l) Are giving a speech for broadcast or to an audience, provided that the audience is at least 6 feet away from the speaker.



**9. Contact tracing requirements for particular gatherings.**

- (a) Gatherings are prohibited at the following facilities unless the facility maintains accurate records, including date and time of entry, names of patrons, and contact information, to aid with contact tracing, and denies entry for a gathering to any visitor who does not provide, at a minimum, their name and phone number:
  - (1) All businesses or operations that provide barbering, cosmetology services, body art services (including tattooing and body piercing), tanning services, massage services, or similar personal care services;
  - (2) Exercise facilities.
- (b) All businesses or operations that provide in-home services, including cleaners, repair persons, painters, and the like must not permit their employees to gather with clients unless the business maintains accurate appointment records, including date and time of service, name of client, and contact information, to aid with contact tracing.
- (c) Upon request, businesses, schools, and other facilities must provide names and phone numbers of individuals with possible COVID-19 exposure to MDHHS and local health departments to aid in contact tracing and case investigation efforts.
- (d) Data collected under this section:
  - (1) Must not be sold, or used for sales or marketing purposes without the express consent of each patron;
  - (2) Must be protected as confidential information to the fullest extent of the law;
  - (3) Must not be provided to law enforcement or immigration officials except upon receipt of a lawful subpoena from a court or other lawful court order;
  - (4) Must be retained for 28 days by the collecting organization, after which time the data must be destroyed. If facilities use existing data to fulfill this requirement, they may instead follow their own pre-existing data retention and destruction policies at the conclusion of the 28-day retention period.

**10. Implementation.**

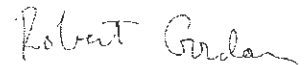
- (a) Nothing in this order modifies, limits, or abridges protections provided by state or federal law for a person with a disability.
- (b) Under MCL 333.2235(1), local health departments are authorized to carry out and enforce the terms of this order.
- (c) Law enforcement officers, as defined in the Michigan Commission on Law Enforcement Standards Act, 1965 Public Act 203, MCL 28.602(f), are deemed to be "department representatives" for purposes of enforcing this order, and are specifically authorized to investigate potential violations of this order. They may coordinate as necessary with the appropriate regulatory entity and enforce this order within their jurisdiction.
- (d) Neither a place of religious worship nor its owner is subject to penalty under this order for allowing religious worship at such place. No individual is subject to penalty under this order for engaging in religious worship at a place of religious worship.

- (e) Consistent with MCL 333.2261, violation of this order is a misdemeanor punishable by imprisonment for not more than 6 months, or a fine of not more than \$200.00, or both.
- (f) Nothing in this order affects any prosecution or civil citation based on conduct that occurred before the effective date of this order.
- (g) Nothing in this order should be taken to interfere with or infringe on the powers of the legislative and judicial branches to perform their constitutional duties or exercise their authority, or protections guaranteed by the state or federal constitution under these emergency circumstances.
- (h) Consistent with any rule or emergency rule promulgated and adopted in a schedule of monetary civil penalties under MCL 333.2262(1) and applicable to this order, violations of this order are also punishable by a civil fine of up to \$1,000 for each violation or day that a violation continues.
- (i) If any provision of this order is found invalid by a court of competent jurisdiction, whether in whole or in part, such decision will not affect the validity of the remaining part of this order.
- (j) It is not a violation of this order for a person to enter a facility otherwise closed for gatherings if they are entering solely for the purpose of using restroom facilities.

This order takes effect on December 9, 2020 at 12:01 AM, at which time the November 18, 2020, order entitled Gatherings and Face Mask Order is rescinded. This order remains in effect through December 20, 2020 at 11:59 PM. Persons with suggestions and concerns are invited to submit their comments via email to [COVID19@michigan.gov](mailto:COVID19@michigan.gov).

Date:

December 7, 2020



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Robert Gordon, Director

Michigan Department of Health and Human Services

# EXHIBIT 2



STATE OF MICHIGAN

GRETCHEN WHITMER  
GOVERNOR

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
LANSING

ROBERT GORDON  
DIRECTOR

December 18, 2020

### **Emergency Order under MCL 333.2253 – Gatherings and Face Mask Order**

Michigan law imposes on the Michigan Department of Health and Human Services (MDHHS) a duty to continually and diligently endeavor to “prevent disease, prolong life, and promote public health,” and gives the Department “general supervision of the interests of health and life of people of this state.” MCL 333.2221. MDHHS may “[e]xercise authority and promulgate rules to safeguard properly the public health; to prevent the spread of diseases and the existence of sources of contamination; and to implement and carry out the powers and duties vested by law in the department.” MCL 333.2226(d).

The novel coronavirus (COVID-19) is a respiratory disease that can result in serious illness or death. It is caused by a new strain of coronavirus not previously identified in humans and easily spread from person to person. COVID-19 spreads through close human contact, even from individuals who may be asymptomatic.

In recognition of the severe, widespread harm caused by epidemics, the Legislature has granted MDHHS specific authority, dating back a century, to address threats to the public health like those posed by COVID-19. MCL 333.2253(1) provides that “[i]f the director determines that control of an epidemic is necessary to protect the public health, the director by emergency order may prohibit the gathering of people for any purpose and may establish procedures to be followed during the epidemic to insure continuation of essential public health services and enforcement of health laws. Emergency procedures shall not be limited to this code.” See also *In re Certified Questions*, Docket No. 161492 (Viviano, J., concurring in part and dissenting in part, at 20) (“[T]he 1919 law passed in the wake of the influenza epidemic and Governor Sleeper’s actions is still the law, albeit in slightly modified form.”); *id.* (McCormack, C.J., dissenting, at 12). Enforcing Michigan’s health laws, including preventing disease, prolonging life, and promoting public health, requires limitations on gatherings and the establishment of procedures to control the spread of COVID-19. This includes limiting the number, location, size, and type of gatherings, and requiring the use of mitigation measures at gatherings as a condition of hosting such gatherings.

On March 10, 2020, MDHHS identified the first two presumptive-positive cases of COVID-19 in Michigan. As of December 16, 2020, Michigan had seen 446,752 confirmed cases and 11,018 confirmed deaths attributable to COVID-19. Michigan was one of the states most heavily impacted by COVID-19 early in the pandemic, with new cases peaking at nearly 2,000 per day in late March. Strict preventative measures and the cooperation of Michiganders drove daily case numbers dramatically down to less than 200 confirmed cases per day in mid-June, greatly reducing the loss of life. Beginning in October, Michigan again experienced an exponential growth in cases. Daily new cases are now near 5,000, which is roughly three times higher than what was seen in the spring.

On November 15, 2020, MDHHS issued an order to slow the high and rapidly increasing rate of spread of COVID-19. Cases, hospitalizations, and deaths remained high through early December, threatening hospital and public health capacity. On December 7, 2020, MDHHS issued an order sustaining the protections of the prior order.

The State of Michigan presently has a seven-day average of 439 cases per million people, which is nearly five times higher than the case rate on October 1. Test positivity has increased from 3.2% in early October to 10.6% on December 18. A high number of cases creates significant pressure on our emergency and hospital systems. Although complaints of coronavirus-like illness in emergency departments are now starting to decrease for the state, the current rate remains near the all-time high, and is four times higher than early October. An average of 425 daily hospital admissions were seen in Michigan in the last week, with individuals under 60 years old accounting for a third of all new admissions. There are over 3,500 Michiganders hospitalized for COVID-19 and 17.3% of all available inpatient beds are occupied by patients who have COVID-19. The state death rate is 11.7 deaths per million people and continues to increase. The death rate is nine times higher than it was in early October, and there are more than 800 weekly deaths in Michigan. On December 11, 2020, the Food and Drug Administration granted an emergency use authorization for the first vaccine to prevent COVID-19, and more approvals are expected in the coming weeks. There is good reason for hope, but the pandemic is not yet at an end, and many more challenging months lay ahead.

In light of the beginning of vaccination and the recent promising reductions in the rate of spread of COVID-19, we can now begin cautious reopening with close monitoring of impacts. In so doing, however, we must move with care, patience, and vigilance, recognizing the grave harm that this virus continues to inflict on our state and how quickly our progress in suppressing it can be undone. As we reopen, the surest way to maintain our momentum in controlling the spread of COVID-19 is to open lower risk venues first, and gradually, rather than all at once. By taking deliberate steps and closely monitoring the data, we can ensure that Michigan remains on the path to recovery.

Considering the above, and upon the advice of scientific and medical experts, I have concluded pursuant to MCL 333.2253 that the COVID-19 pandemic continues to constitute an epidemic in Michigan. I have also, subject to the grant of authority in 2020 PA 238 (signed into law on October 22, 2020), herein defined the symptoms of COVID-19 based on the latest epidemiological evidence. I further conclude that control of the epidemic is necessary to protect the public health and that it is necessary to restrict gatherings and establish procedures to be followed during the epidemic to ensure the continuation of essential public health services and enforcement of health laws. As provided in MCL 333.2253, these emergency procedures are not limited to the Public Health Code.

I therefore order that:

**1. Definitions.**

- (a) “Child-care organization” means that term as defined by section 1(b) of the Child Care Organizations Act, 1973 PA 116, as amended, MCL 722.111(b) and day, residential, travel, and troop camps for children (as defined by Rule 400.11101(1)(q) of the Michigan Administrative Code).
- (b) “Employee” means that term as defined in section 2 of the Improved Workforce Opportunity Wage Act, 2018 PA 337, as amended, MCL 408.932, and also includes independent contractors.
- (c) “Lower risk entertainment facility” means: auditoriums; arenas; cinemas; concert halls; performance venues; sporting venues; stadiums; and theaters.
- (d) “Exercise facility” means a location in which individuals participate in individual or group physical activity, including gymnasiums, fitness centers, and exercise studios.
- (e) “Face mask” means a tightly woven cloth or other multi-layer absorbent material that closely covers an individual’s mouth and nose.

- (f) “Food service establishment” means that term as defined in section 1107(t) of the Food Law, 2000 PA 92, as amended, MCL 289.1107(t).
- (g) “Gathering” means any occurrence, either indoor or outdoor, where two or more persons from more than one household are present in a shared space.
- (h) “Higher risk recreational facilities” means recreational facilities other than lower risk recreational facilities. This includes: laser tag; night clubs; strip clubs; water parks; and trampoline parks.
- (i) “Household” means a group of persons living together in a shared dwelling with common kitchen or bathroom facilities. In dwellings with shared kitchen or bathroom facilities occupied by 20 or more unrelated persons, households are defined by individuals who share a bedroom.
- (j) “Indoors” means within a space that is fully or partially enclosed on the top, and fully or partially enclosed on two or more contiguous sides. Additionally, in a space that is fully or partially enclosed on the top, and fully or partially enclosed on two non-contiguous sides, any part of that space that is more than 8 feet from an open side is indoors.
- (k) “Lower risk recreational facilities” means recreational facilities where there is not physical contact among participants, there is minimal interaction between households participating in activities, masks can be worn, and, if indoors, activities involve a low degree of exhalation or physical exertion. This means: archery ranges; amusement parks; arcades; bingo halls; bowling centers; casinos; and gun ranges.
- (l) “Outdoors” means a space that is not indoors.
- (m) “Organized sports” means competitive athletic activity requiring skill or physical prowess and organized by a sports organizer.
- (n) “Sports Organizer” means an institution, association, or other organization that sets and enforces rules to ensure the physical health and safety of all participants for an organized sport.
- (o) “Principal symptoms of COVID-19” means at least 1 of fever, uncontrolled cough, or atypical new onset of shortness of breath, or at least 2 of the following not explained by a known physical condition: loss of taste or smell, muscle aches, sore throat, severe headache, diarrhea, vomiting, or abdominal pain. Per section 1(h) of 2020 PA 238, this definition represents the latest medical guidance, and serves as the controlling definition.

## **2. General capacity limitations at gatherings.**

### **(a) Indoor gatherings:**

- (1) Are prohibited at residential venues, except where no more than 10 persons from no more than 2 households are gathered. Such gatherings should be held consistent with guidance issued by the Department of Health and Human Services for such gatherings;

- (2) Are prohibited at non-residential venues.

### **(b) Outdoor gatherings are permitted only as follows:**

- (1) At residential venues, 25 or fewer persons are gathered, comprised of no more than 3 households;
- (2) At non-residential venues:
  - (A) 25 or fewer persons are gathered at a venue without fixed seating, and attendance is limited to 20 persons per 1,000 square feet, including within any distinct area within the event space;
  - (B) 25 or fewer persons are gathered at a venue with fixed seating, and attendance is limited to 20% of seating capacity of the venue.
- (c) The limitations to gatherings in sections 2(a) and 2(b) do not apply to:
  - (1) Incidental, temporary gatherings of persons in a shared space, such as frequently occur in an airport, bus station, exercise facility, food service establishment, shopping mall, or public pool, except as prohibited in section 3;
  - (2) Gatherings between an employee and a customer for the purpose of receiving services;
  - (3) Workplace gatherings that occur consistent with the Emergency Rules issued by MIOSHA on October 14, 2020;
  - (4) Voting or official election-related activities;
  - (5) Training of law enforcement, correctional, medical, or first responder personnel, insofar as those activities cannot be conducted remotely;
  - (6) Education and support services at public, nonpublic, and boarding schools serving students in prekindergarten through grade 8;
  - (7) Children in a child-care organization, after school program, or camp setting;
  - (8) Persons traveling on a school bus or other public transit;
  - (9) Gatherings for the purpose of medical treatment, including mental health and substance use disorder support services;
  - (10) Gatherings of up to 25 persons for the purpose of a funeral;
  - (11) Residential care facilities, which are subject to the October 21 epidemic order entitled "Requirements for Residential Facilities," or any replacement of that order;
  - (12) Cardiopulmonary resuscitation courses and swimming instruction courses;
  - (13) Proctored, nationally-administered admissions and certification examinations that are not available remotely, provided that examinees are spaced no less than 12 feet apart;
  - (14) Gatherings at lower risk entertainment and lower risk recreational facilities that comply with the restrictions set forth in section 3(a) of this order;
  - (15) Gatherings for public health or other emergency purposes.

- (d) As a condition of hosting a gathering under this order, organizers and facilities must design the gathering to encourage and maintain physical distancing, and must ensure that persons not part of the same household maintain 6 feet of distance from one another to the extent possible.

**3. Gathering restrictions for entertainment and food service facilities.**

- (a) Gatherings are permitted at lower risk entertainment facilities and lower risk recreational facilities, provided that:
  - (1) Organizers do not permit persons to mingle with others from outside of their household;
  - (2) Household groups consist of no more than 6 persons;
  - (3) Households are spaced or seated at least 6 feet apart;
  - (4) No food or beverages are sold or consumed on the premises;
  - (5) Venues comply with the following capacity limits:
    - (A) For venues with fixed seating, occupancy must not exceed 20% of the limits established by the State Fire Marshal or a local fire marshal;
    - (B) For venues with non-fixed seating, occupancy is limited to 20 persons per 1,000 square feet, including within any distinct space within the venue;
    - (C) For all venues, no more than 100 persons may be gathered within any distinct space within the venue, except at stadiums and arenas hosting sporting events as provided in section 6, in which case up to 250 persons may be gathered.
- (b) Gatherings are permitted at food service establishments under the following conditions:
  - (1) Persons are not gathered indoors except in custodial settings, medical facilities, school and university cafeterias, shelters, and soup kitchens. If attendees are seated at tables, persons must be 6 feet apart, or members of a household may share a table and tables must be spaced a minimum of 6 feet apart;
  - (2) Persons participating in outdoor dining are seated no more than 6 to a table and tables are spaced a minimum of 6 feet apart;
- (c) Nothing in this section shall be construed to prohibit the use of these facilities for public health or other emergency purposes.

**4. Gathering restrictions for other facilities.** In addition to the gathering limitations set forth elsewhere in this order, the following limitations apply to gatherings in the following facilities:

- (a) A gathering at a retail store, library, or museum must not exceed 30% of total occupancy limits established by the State Fire Marshal or a local fire marshal. Nevertheless, a retail store, library, or museum may permit one customer at a time to enter if strict adherence to



the 30% total occupancy limit would otherwise result in closure. Spaces for indoor dining, including food courts, must be closed.

- (1) Retail stores must establish lines to regulate entry and checkout, with markings for patrons to enable them to stand at least six feet apart from one another while waiting.
- (b) At exercise facilities:
  - (1) Gatherings must not exceed 25% of the total occupancy limits established by the State Fire Marshal or a local fire marshal; and
  - (2) There must be at least 12 feet of distance between each occupied workout station;
  - (3) Indoor gatherings for group fitness activities or classes are prohibited. Outdoor gatherings for group fitness activities or classes are permitted.
- (c) Gatherings in waiting rooms at outpatient health-care facilities, veterinary clinics, and other businesses are prohibited unless the facility implements a system to ensure that persons not of the same household maintain 6 feet of distance. To the extent possible, this system must include a policy that patients wait in their cars for their appointments to be called.
- (d) Gatherings at an indoor or outdoor pool not otherwise prohibited by this order must not exceed 25% of bather capacity limits described in Rule 325.2193 of the Michigan Administrative Code.
- (e) Gatherings at indoor ice and roller rinks are prohibited, except for individual exercise or one-on-one instruction, where occupancy is limited to 2 persons per 1,000 square feet, including within the exercise space. Gatherings at outdoor ice and roller rinks are permitted, except for organized contact sports, provided that occupancy is limited to 2 persons per 1,000 square feet, including within the exercise space. Gatherings for the purpose of non-contact sports and open skating are permitted only at outdoor rinks.
- (f) In facilities offering non-essential personal care services, including hair, nail, tanning, massage, traditional spa, tattoo, body art, and piercing services, and similar personal care services, gatherings are only permitted to the extent that services do not involve the removal of face masks. All services must be provided by appointment, and gatherings in waiting areas are prohibited.

## **5. Schools, colleges, technical schools, and universities.**

- (a) Gatherings at public, nonpublic, and boarding schools for the purpose of conducting in-person instruction of pupils in prekindergarten through grade 12 are permitted, subject to local health department and school district decisions on remote learning. Gatherings are permitted for the purpose of extracurricular activities except those that involve physical contact among participants, a high degree of exhalation or physical exertion indoors, or where masks cannot be worn.
- (b) Gatherings at public, nonpublic, and boarding schools are permitted for the purpose of child care programs, tutoring and academic support, and for providing services to students in need, including food distribution, access to internet connectivity, and physical and mental health care services.

- (c) Gatherings at colleges and universities, trade schools, and career schools are permitted for the purpose of holding in-person classes and other events sponsored by the educational institution. The limits imposed by section 2(a) and 2(b) do not apply to such gatherings, but they remain subject to all other applicable requirements of this order.

#### **6. Organized sports gathering restrictions.**

- (a) Gatherings for the purpose of indoor organized sports and contact organized sports are prohibited unless all participants, teams, and venues comply with the enhanced testing regimen specified in the Additional Mitigation Measures for Safer Athletic Practice and Play without the use of Face Coverings section of MDHHS guidance on Additional Measures for Safer Athletic Practice and Play, or a school is participating in an MDHHS testing pilot program. Sports organizers complying with this section may host gatherings for the purpose of practice and competition notwithstanding the gathering prohibitions in section 2.
- (b) Gatherings for the purpose of outdoor, non-contact sports are permitted.

#### **7. Face mask requirement at gatherings.**

- (a) All persons participating in gatherings are required to wear a face mask.
- (b) As a condition of gathering for the purpose of transportation, transportation providers must require all staff and patrons to use face masks, and must enforce physical distancing among all patrons to the extent feasible.
- (c) Except as provided elsewhere in this order, a person responsible for a business, store, office, government office, school, organized event, or other operation, or an agent of such person, must prohibit gatherings of any kind unless the person requires individuals in such gatherings (including employees) to wear a face mask, and denies entry or service to all persons refusing to wear face masks while gathered.
- (d) A person responsible for a business, store, office, government office, school, organized event, or other operation, or an agent of such person, may not assume that someone who enters the facility without a face mask falls within one of the exceptions specified in section 8 of this order, including the exception for individuals who cannot medically tolerate a face mask. An individual's verbal representation that they are not wearing a face mask because they fall within a specified exception, however, may be accepted.
- (e) A person responsible for a child-care organization or camp, or an agent of such person, must not allow gatherings unless face masks are worn by all staff. Children must wear face masks as indicated below:
  - (1) All children 2 years and older when on a school bus or other transportation provided by the child-care organization or camp;
  - (2) All children 4 years and older when in indoor hallways and indoor common areas;
  - (3) All children 5 years and older when in classrooms, homes, cabins, or similar indoor settings.

**8. Exceptions to face mask requirements.** Although a face mask is strongly encouraged even for individuals not required to wear one (except for children under the age of 2), the requirement to wear a face mask in gatherings as required by this order does not apply to individuals who:

- (a) Are younger than 5 years old, outside of child-care organization setting (which are subject to requirements set out in section 7(e));
- (b) Cannot medically tolerate a face mask;
- (c) Are eating or drinking while seated at a food service establishment or at a private residence;
- (d) Are exercising outdoors and able to consistently maintain 6 feet of distance from others;
- (e) Are swimming;
- (f) Are receiving a medical service for which removal of the face mask is necessary;
- (g) Are asked to temporarily remove a face mask for identification purposes;
- (h) Are communicating with someone who is deaf, deafblind, or hard of hearing and whose ability to see the mouth is essential to communication;
- (i) Are actively engaged in a public safety role, including but not limited to law enforcement, firefighters, or emergency medical personnel, and where wearing a face mask would seriously interfere in the performance of their public safety responsibilities;
- (j) Are at a polling place for purposes of voting in an election;
- (k) Are engaging in a religious service; or
- (l) Are giving a speech for broadcast or to an audience, provided that the audience is at least 6 feet away from the speaker.

**9. Contact tracing requirements for particular gatherings.**

- (a) Gatherings are prohibited at the following facilities unless the facility maintains accurate records, including date and time of entry, names of patrons, and contact information, to aid with contact tracing, and denies entry for a gathering to any visitor who does not provide, at a minimum, their name and phone number:
  - (1) All businesses or operations that provide barbering, cosmetology services, body art services (including tattooing and body piercing), tanning services, massage services, or similar personal care services;
  - (2) Exercise facilities.
- (b) All businesses or operations that provide in-home services, including cleaners, repair persons, painters, and the like must not permit their employees to gather with clients unless the business maintains accurate appointment records, including date and time of service, name of client, and contact information, to aid with contact tracing.

- (c) Upon request, businesses, schools, and other facilities must provide names and phone numbers of individuals with possible COVID-19 exposure to MDHHS and local health departments to aid in contact tracing and case investigation efforts.
- (d) Data collected under this section:
  - (1) Must not be sold, or used for sales or marketing purposes without the express consent of each patron;
  - (2) Must be protected as confidential information to the fullest extent of the law;
  - (3) Must not be provided to law enforcement or immigration officials except upon receipt of a lawful subpoena from a court or other lawful court order;
  - (4) Must be retained for 28 days by the collecting organization, after which time the data must be destroyed. If facilities use existing data to fulfill this requirement, they may instead follow their own pre-existing data retention and destruction policies at the conclusion of the 28-day retention period.

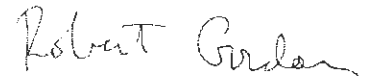
## 10. Implementation.

- (a) Nothing in this order modifies, limits, or abridges protections provided by state or federal law for a person with a disability.
- (b) Under MCL 333.2235(1), local health departments are authorized to carry out and enforce the terms of this order.
- (c) Law enforcement officers, as defined in the Michigan Commission on Law Enforcement Standards Act, 1965 Public Act 203, MCL 28.602(f), are deemed to be “department representatives” for purposes of enforcing this order, and are specifically authorized to investigate potential violations of this order. They may coordinate as necessary with the appropriate regulatory entity and enforce this order within their jurisdiction.
- (d) Neither a place of religious worship nor its owner is subject to penalty under this order for allowing religious worship at such place. No individual is subject to penalty under this order for engaging in religious worship at a place of religious worship.
- (e) Consistent with MCL 333.2261, violation of this order is a misdemeanor punishable by imprisonment for not more than 6 months, or a fine of not more than \$200.00, or both.
- (f) Nothing in this order affects any prosecution or civil citation based on conduct that occurred before the effective date of this order.
- (g) Nothing in this order should be taken to interfere with or infringe on the powers of the legislative and judicial branches to perform their constitutional duties or exercise their authority, or protections guaranteed by the state or federal constitution under these emergency circumstances.
- (h) Consistent with any rule or emergency rule promulgated and adopted in a schedule of monetary civil penalties under MCL 333.2262(1) and applicable to this order, violations of this order are also punishable by a civil fine of up to \$1,000 for each violation or day that a violation continues.

- (i) If any provision of this order is found invalid by a court of competent jurisdiction, whether in whole or in part, such decision will not affect the validity of the remaining part of this order.
- (j) It is not a violation of this order for a person to enter a facility otherwise closed for gatherings if they are entering solely for the purpose of using restroom facilities.

This order takes effect on December 21, 2020 at 12:01 AM, at which time the December 7, 2020, order entitled Gatherings and Face Mask Order is rescinded. This order remains in effect through January 15, 2021 at 11:59 PM. Persons with suggestions and concerns are invited to submit their comments via email to [COVID19@michigan.gov](mailto:COVID19@michigan.gov).

Date: 12/18/2020



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Robert Gordon, Director  
Michigan Department of Health and Human Services

# EXHIBIT 3



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF AGRICULTURE  
AND RURAL DEVELOPMENT

GARY MCDOWELL  
DIRECTOR

November 25, 2020

**ORDER TO CEASE AND DESIST FOOD OPERATIONS**

The Director of the Michigan Department of Agriculture and Rural Development (MDARD), pursuant to a finding of IMMEDIATE DANGER TO THE PUBLIC HEALTH by the Western Upper Peninsula District Health Department, has determined that continued operation of **Café Rosetta**, an MDARD licensed food service establishment, constitutes an IMMEDIATE and SUBSTANTIAL DANGER TO THE PUBLIC HEALTH.

This food service establishment operates under a food service license issued by MDARD and referred for approval by the delegated authority of the Western Upper Peninsula District Health Department.

Section 2113 of the Food Law provides that the Director may order the immediate cessation of operation of a food establishment upon a determination that continued operation would create an imminent or substantial hazard to the public health.

Upon review of the Western Upper Peninsula District Health Department's finding of IMMEDIATE DANGER TO THE PUBLIC HEALTH AND REQUIRING CORRECTIVE ACTION issued on November 23, 2020, the MDARD Director has made the following findings:

1. Café Rosetta is open to the public and allowing inside dining with no restrictions.
2. The food service establishment is not requiring persons to wear a face mask.
3. Café Rosetta is openly advertising that they are open for inside dining.
4. The Western Upper Peninsula District Health Department has determined that Café Rosetta's activity poses an imminent danger to the public health.

Based on the evidence provided by the Western Upper Peninsula District Health Department and pursuant to the Director's authority under MCL 289.2113(1), the MDARD Director has determined that the continued operation of this food establishment creates an IMMEDIATE AND SUBSTANTIAL DANGER TO THE PUBLIC HEALTH.

Therefore, Café Rosetta is hereby ORDERED TO IMMEDIATELY CEASE AND DESIST ALL FOOD OPERATIONS.

This order is effective immediately and remains in effect until such time as an evaluation demonstrates the conditions have been abated.

Failure to comply with this Order is a violation of the Food Law. Pursuant to MCL 289.2113(3), Café Rosetta may request an administrative hearing regarding MDARD's issuance of this Order. To request an administrative hearing, contact Brad Deacon, Director of Legal Affairs and Emergency Management at 517-284-5729 or [deaconb9@michigan.gov](mailto:deaconb9@michigan.gov) by December 2, 2020.

Gary McDowell, Director  
Michigan Department of Agriculture and Rural Development

# EXHIBIT 4



STATE OF MICHIGAN  
MICHIGAN DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT

IN THE MATTER OF:

Café Rosetta  
102 Fifth Street  
Calumet, MI 49913

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Case Type: Revocation

**EMERGENCY SUSPENSION ORDER PURSUANT TO MCL 289.4125 AND  
MCL 24.292(2) AND NOTICE OF HEARING**

**GENERAL ALLEGATIONS**

1. The food establishment license issued to Café Rosetta to operate a food service establishment is summarily suspended. This summary suspension proceeding is undertaken pursuant to MDARD's authority under Section 4125 of the Michigan Food Law, MCL 289.1101 *et seq.*, and in accordance with the Administrative Procedures Act, MCL 24.201 *et seq.*

**BACKGROUND**

2. Café Rosetta operates a food establishment located at 102 Fifth Street in Calumet, Michigan. Café Rosetta's food establishment license is issued by MDARD.

3. Pursuant to the Food Law, if the MDARD Director determines that an imminent threat to the public health, safety, or welfare exists, the MDARD Director may summarily suspend a Food Establishment License.

4. Additionally, the Administrative Procedures Act, provides that if an agency concludes that the health, safety, or welfare requires emergency action and incorporates this finding in its order, summary suspension of a license may be ordered effective on the date specified in the order or on service of a certified copy of the order on the licensee, whichever is later. See MCL 24.292(2).

### **Michigan's efforts to curb Covid-19**

5. On March 10, 2020, Governor Whitmer issued Executive Order 2020-4 declaring a state of emergency due to the breakout of COVID-19 in the State of Michigan. COVID-19 is a respiratory disease that can result in serious illness or death. COVID-19 is caused by a new strain of coronavirus not previously identified in humans and it easily spreads between persons. To date, there have been over 340,000 confirmed cases of COVID-19 in the State of Michigan, resulting in over 8,900 deaths. There is currently no vaccine or antiviral treatment for this disease available to the general public.

6. The Public Health Code gives the Michigan Department of Health and Human Services (MDHHS) "general supervision of the interests of health and life of people of this state," MCL 333.2221(2), and requires it to "endeavor to prevent disease, prolong life, and promote the public health," MCL 333.2221(1). MDHHS may "[e]xercise authority and promulgate rules to safeguard properly the public health; to prevent the spread of diseases and the existence of sources of contamination; and to implement and carry out the powers and duties vested by law

in the department.” MCL 333.2226(d). Further, MDHHS is authorized to issue emergency orders to address epidemics, pursuant to MCL 333.2253(1):

If the director determines that control of an epidemic is necessary to protect the public health, the director by emergency order may prohibit the gathering of people for any purpose and may establish procedures to be followed during the epidemic to insure continuation of essential public health services and enforcement of health laws.

7. On November 15, 2020, MDHHS issued its most recent Gatherings and Face Mask Order, which took effect on November 18, 2020, and remains in effect until December 8, 2020. See attached Ex. 1. The November 15, 2020 Order states that the recent “sharp rise in new [COVID-19] infections suggests that the state is entering the most challenging phase of the pandemic thus far.” The order concludes that “the COVID-19 pandemic continues to constitute an epidemic in Michigan.”

8. MDHHS’s order generally prohibits indoor gatherings at non-residential venues. See 11/15/2020 Gatherings and Face Mask Order, section 2(a)(2). A “gathering” is “any occurrence, either indoor or outdoor, where two or more persons from more than one household are present in a shared space.” *Id.* at section 1(3). More specifically, the order prohibits indoor gatherings at numerous types of entertainment venues and recreational facilities. *Id.* at section 3(a)(1)-(2). It also prohibits indoor gatherings at food service establishments except in “custodial settings, medical facilities, school and university cafeterias, shelters, and soup kitchens.” *Id.* at section 3(b)(1).

9. Further, subject to limited exceptions, “[a]ll persons participating in gatherings are required to wear a face mask.” *Id.* at section 7(a). “Except as provided elsewhere in [the] order, a person responsible for a business . . . must

prohibit gatherings of any kind unless the person requires individuals in such gatherings (including employees) to wear a face mask[] and denies entry or service to all persons refusing to wear face masks while gathered.” *Id.* at section 7(c).

10. Violations of the Gatherings and Face Mask Order constitute misdemeanors and are punishable by up to six months imprisonment and certain fines. See *id.* at section 10(e), (h).

### **Café Rosetta’s operations in violation of MDHHS’s order**

11. On November 23, 2020, the Western Upper Peninsula Health Department issued Café Rosetta a “Warning Order Finding Imminent Danger to the Public Health and Requiring Corrective Action” (Health Department Order). The Health Department Order stated that Café Rosetta was not requiring customers or employees to wear masks and the food establishment was open to the public for indoor dining. Based on its findings, the Western Upper Peninsula Health Department determined that Café Rosetta’s operations posed an imminent danger to the health and lives of citizens in the County.

12. The Health Department Order required that Café Rosetta comply with all applicable public health laws and orders and submit a corrective action within 72 hours.

13. In spite of the Health Department’s Order, Café Rosetta continued to offer indoor dining and did not require customers or employees to wear face masks.

14. On November 25, 2020, MDARD issued Café Rosetta an “Order to Cease and Desist Food Operations” (Cease and Desist Order). MDARD’s Cease and

Desist Order was hand delivered to Café Rosetta by the Western Upper Peninsula Health Department on the same date at 1:30 pm. At that time, Amy Heikkinen, owner of Café Rosetta indicated that she did not attend to voluntarily comply with the Cease and Desist Order.

15. On November 27, 28, and 30 and December 1, 2020, the Western Upper Peninsula Health Department conducted follow-up inspections and surveillance at Café Rosetta. On each occasion the Health Department documented that the firm was operating in violation of the MDARD's Cease and Desist Order, was operating in violation of MDHHS's Gatherings and Face Mask Order, was continuing to offer indoor dining, and was not requiring customers or employees to wear face coverings.

#### **SUMMARY SUSPENSION**

18. The Food Law provides that MDARD's Director can summarily suspend a food establishment license upon a determination that an imminent threat to the public health, safety, or welfare exists. MCL 289.4125(4).

19. MDARD's Director has determined that Café Rosetta's continued operations providing indoor dining and not requiring staff and customers to wear facial coverings has creates an imminent threat to the public health, safety, and welfare.

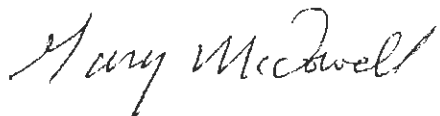
20. Additionally, consistent with the Administrative Procedures Act, MDARD finds that that emergency action is required because Café Rosetta's

current operations pose a significant risk to the community's health, safety, and welfare.

21. For the foregoing reasons:

A. Effective immediately, Café Rosetta's food establishment license is summarily suspended; and

B. The Michigan Office of Administrative Hearings and Rules will hold a hearing on MDARD's summary suspension of Café Rosetta's food establishment license on December 10, 2020 at 9:00 am via Zoom.



Gary McDowell, Director  
Michigan Department of Agriculture  
& Rural Development

Date: December 2, 2020

# EXHIBIT 5

**STATE OF MICHIGAN  
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES**

**IN THE MATTER OF:**

**Michigan Department of Agriculture and  
Rural Development,  
Petitioner**

**v**

**Café Rosetta, LLC,  
Respondent**

**Docket No.: 20-025457**

**Case No.: N/A**

**Agency: Agriculture**

**Case Type: AG Food & Dairy**

**Filing Type: Appeal**

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**Issued and entered  
this 21<sup>st</sup> day of December 2020  
by: Lauren G. Van Steel  
Administrative Law Judge**

**DECISION AND ORDER CONTINUING SUMMARY SUSPENSION**

This matter concerns a summary suspension order issued by Petitioner, Michigan Department of Agriculture and Rural Development (MDARD), regarding the food establishment license of Respondent, Café Rosetta, under Section 4125 of the Michigan Food Law, MCL 289.1101 *et seq.*, and in accordance with Section 92(2) of the Administrative Procedures Act (APA), MCL 24.201 *et seq.* This Decision and Order Continuing Summary Suspension<sup>1</sup> denies Respondent's petition to dissolve summary suspension.

**PROCEDURAL HISTORY**

On December 2, 2020, Petitioner issued an Emergency Suspension Order Pursuant to MCL 289.4125 and MCL 24.292(2) and Notice of Hearing, scheduling a contested case hearing on December 2, 2020. Upon receipt of the request for hearing from MDARD, the Michigan Office of Administrative Hearings and Rules issued a Notice of Video Conference Hearing on December 3, 2020, stating the hearing date of December 10, 2020.

On December 10, 2020, the video-conference hearing was held as scheduled. Danielle Allison-Yokom, Assistant Attorney General, appeared on behalf of Petitioner. David A.

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<sup>1</sup> MCL 289.4125 authorizes the presiding officer to issue an order dissolving or continuing the Department's summary suspension order, rather than a proposal for decision recommending same.



Kallman appeared as Attorney for Respondent. Respondent stated its petition to dissolve summary suspension on the record through counsel.

Petitioner called Tanya Rule, director of environmental health for the Western Upper Peninsula (U.P.) Health Department; Scott Barr, health inspector for the Western U.P. Health Department; and James Padden, MDARD food safety program manager, as witnesses. The following exhibits were offered by Petitioner and admitted into evidence:

1. Petitioner's Exhibit No. 1 is a copy of a Food Establishment Inspection Report, Western U.P. Health Department, dated November 18, 2020.
2. Petitioner's Exhibit No. 2 is a copy of a Food Establishment Inspection Report, Western U.P. Health Department, dated November 20, 2020.
3. Petitioner's Exhibit No. 3 is a copy of a Warning Order Finding Imminent Danger to the Public Health and Requiring Corrective Action, Western U.P. Health Department, dated November 23, 2020.
4. Petitioner's Exhibit No. 4 is a copy of a Food Establishment Inspection Report with photographs of Café Rosetta interior and exterior taken by Western U.P. Health Department, dated November 24, 2020.
5. Petitioner's Exhibit No. 5 is a copy of an Order to Cease and Desist Food Operations, MDARD, dated November 25, 2020.
6. Petitioner's Exhibit No. 6 is a copy of a Food Establishment Inspection Report, Western U.P. Health Department, dated November 25, 2020.
7. Petitioner's Exhibit No. 7 is a copy of a Food Establishment Inspection Report and Attachment, with photographs taken of Café Rosetta interior and exterior, Western U.P. Health Department, dated November 27, 2020; MDARD Order to Cease and Desist Food Operations, dated November 25, 2020; and MDHHS Penalty Notice for Violation of November 15 Emergency Order under MCL 333.2253, dated November 25, 2020.
8. Petitioner's Exhibit No. 8 is a copy of a Food Establishment Inspection Report with photographs of Café Rosetta exterior taken by Western U.P. Health Department, dated November 28, 2020.
9. Petitioner's Exhibit No. 9 is a copy of a Food Establishment Inspection Report, with photographs of Café Rosetta interior and exterior taken by Western U.P. Health Department, dated November 30, 2020.

10. Petitioner's Exhibit No. 10 is a copy of a Food Establishment Inspection Report, Western U.P. Health Department, dated December 1, 2020.
11. Petitioner's Exhibit No. 11 is a copy of photographs of Café Rosetta exterior taken by Western U.P. Health Department, dated December 1, 2020.
12. Petitioner's Exhibit No. 12 is a copy of a Communication Log, Western U.P. Health Department, dated December 2, 2020.
13. Petitioner's Exhibit No. 13 is a copy of a Food Establishment Inspection Report, Western U.P. Health Department, dated December 2, 2020.
14. Petitioner's Exhibit No. 14 is a copy of an Emergency Suspension Order Pursuant to MCL 289.4125 and MCL 24.292(2) and Notice of Hearing, MDARD, dated December 2, 2020.
15. Petitioner's Exhibit No. 15 is a copy of a Communication Log, Western U.P. Health Department, dated December 3, 2020.
16. Petitioner's Exhibit No. 16 is a copy of a Food Establishment Inspection Report, Western U.P. Health Department, dated December 3, 2020.
17. Petitioner's Exhibit No. 17 is a copy of a Communication Log, Western U.P. Health Department, dated December 4, 2020.
18. Petitioner's Exhibit No. 18 is a copy of a Communication Log, Western U.P. Health Department, dated December 7, 2020.
19. Petitioner's Exhibit No. 19 is a copy of a Food Establishment Inspection Report with photograph of Café Rosetta taken by Western U.P. Health Department, dated December 7, 2020.
20. Petitioner's Exhibit No. 20 is a copy of a Food Establishment Inspection Report with photographs of Café Rosetta exterior taken by Western U.P. Health Department, dated December 8, 2020.
21. (Petitioner's proposed Exhibit No. 21 was withdrawn at hearing.)
22. Petitioner's Exhibit No. 22 is a tally of complaints received concerning Café Rosetta maintained by the Western U.P. Health Department for dates from July 15, 2020 to December 9, 2020.

23. Petitioner's Exhibit No. 23 is a copy of an Emergency Order under MCL 333.2253 – Gatherings and Face Mask Order, MDHHS, dated November 15, 2020.
24. Petitioner's Exhibit No. 24 is a copy of an Emergency Order under MCL 333.2253 – Gatherings and Face Mask Order, MDHHS, dated December 7, 2020.
25. Petitioner's Exhibit No. 25 is a tally of complaints by the Western U.P. Health Department against establishments between October 1, 2020 and December 9, 2020.
26. Petitioner's Exhibit No. 26 is a tally of complaints received by the Western U.P. Health Department against establishments between October 1, 2019 and September 30, 2020.
27. Petitioner's Exhibit No. 27 is a copy of an Order of Immediate Cessation to Café Rosetta by the Western U.P. Health Department, dated October 23, 2020.

Respondent called Melissa Keranen, bookkeeper for Café Rosetta, to testify as a witness. No exhibits were offered by Respondent. The record was closed at the conclusion of the hearing.

#### **ISSUES AND APPLICABLE LAW**

The issue presented is whether Petitioner MDARD has properly determined that Respondent Café Rosetta's conduct constitutes an imminent threat to the public health, safety or welfare, requiring emergency action and a continuation of the summary suspension of Respondent's food establishment license under Section 4125 of the Michigan Food Law, which provides as follows:

Sec. 4125. (1) Before a food establishment license, bottled water registration, or shellfish dealer certificate is issued, the director shall determine if the applicant meets the minimum requirements of this act and rules.

(2) After an opportunity for a hearing pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, the director may revoke or suspend a food establishment license, a registration for bottled water, or a shellfish dealer certificate issued under this act for failure to comply with requirements of this act or a rule. A person

whose food establishment license, registration for bottled water, or shellfish dealer certificate is revoked or suspended shall discontinue the sale and offering for sale of food, the bottled water, or shellfish, respectively, until he or she complies with this act and the director issues a new registration or removes the suspension.

(3) If a person's food establishment license is revoked for egregious violations under section 5101(a), (b), (c), or (k), the director may refuse to issue or reissue a license to any establishment in which that person has ownership or management interest for a period of 2 years after the revocation.

(4) Based upon facts submitted by a person familiar with those facts or upon information and belief alleging that an imminent threat to the public health, safety, or welfare exists, the director may summarily suspend a license, registration, or certificate issued under this act. A person whose license, registration, or certificate has been summarily suspended under this section may petition the director to dissolve the order. Upon receipt of such a petition, the director shall immediately schedule a hearing to decide whether to grant or deny the petition to dissolve. The presiding officer shall grant the requested relief dissolving the summary suspension order unless sufficient evidence is presented that an imminent threat to the public health, safety, or welfare exists requiring emergency action and continuation of the director's summary suspension order. MCL 289.4125. (Emphasis supplied).

Additionally, Section 4127 of the Michigan Food Law provides as follows:

Sec. 4127. (1) After the regulatory authority receives a petition for a hearing from a license, registration, or certificate holder whose license, registration, or certificate is summarily suspended under section 4125, the proceedings shall be promptly commenced and determined as required by section 92 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.292.

(2) This section does not prevent the regulatory authority's immediate reinstatement of a license, registration, or certificate when the regulatory authority determines the public health hazard or nuisance no longer exists. MCL 289.4127.

Section 92(2) of the APA sets forth the procedures for summary suspension of a license:

Sec. 92 (2) If the agency finds that the public health, safety or welfare requires emergency action and incorporates this finding in its order, summary suspension of a license may be ordered effective on the date specified in the order or on service of a certified copy of the order on the licensee, whichever is later, and effective during the proceedings. The proceedings shall be promptly commenced and determined. MCL 24.292(2).

### **FINDINGS OF FACT**

Based upon the entire record including the testimony and admitted exhibits, the undersigned Administrative Law Judge finds the following facts to be established by competent, material, and substantial evidence:

1. Petitioner, Café Rosetta, LLC, has been a food establishment licensed with Petitioner MDARD.
2. Petitioner operates a food establishment, Café Rosetta, located at 102 Fifth Street in Calumet, Michigan 49913, within the jurisdiction of the Western Upper Peninsula (U.P.) Health Department.
3. Amy B. Heikkinen is the current owner and manager of the Café Rosetta food establishment.
4. Tanya Rule is the Director of Environmental Health for the Western U.P. Health Department, which has an office in Hancock, Michigan (hereafter "local health department").
5. Ms. Rule holds a degree from Northern Michigan University in environmental conservation and biology. She oversees five professional staff members.
6. The Western U.P. Health Department is charged with the enforcement of

the Michigan Public Health Code and the Michigan Food Law. [Pet. Exh. 1].

7. The Western U.P. Health Department offers environmental health consultation and education to restaurant operators. It also regulates food establishments under the Public Health Code, Federal Drug Administration (FDA) code and the Michigan Food Law as it relates to food service, per the credible testimony of Ms. Rule.
8. Concerning the COVID-19 pandemic, the Western U.P. Health Department has engaged in public health education efforts on mitigation measures with the community, regulated facilities, and non-regulated facilities open to the public. It also engages in investigations and overseeing outbreak status.
9. Since the COVID-19 pandemic, the Western U.P. Health Department has tracked exposures from persons diagnosed with COVID-19, notifications, and conducted surveillance of establishments.
10. The Western U.P. Health Department is accredited and charged by Petitioner MDARD with conducting investigations of food establishments within its jurisdiction as delegated enforcement of the Michigan Food Law, per the credible testimony of Ms. Rule and James Padden, food safety program manager with MDARD.
11. The Western U.P. Health Department maintains records of written and online complaints received against establishments. [Pet. Exh. 22 & 25].
12. From June 26, 2020 to date, the Western U.P. Health Department has notified 485 businesses of confirmed positive COVID-19 exposures (either of an employee or a customer during the contagious period), of which 181 (37.9%) positive exposures were in food establishments, per the credible testimony of Ms. Rule.
13. The Western U.P. Health Department uses the definition of an illness "outbreak" to be two or more affected individuals who have a common location, source or cause and similar symptoms. Of the 485 confirmed COVID-19 exposures, there were 50 businesses that met that definition of "outbreak". Of the 50 businesses, 36 or 72% were food service establishments, per the credible testimony of Ms. Rule.
14. For the 36 food establishments with confirmed COVID-19 outbreaks, the Western U.P. Health Department asked the establishments to close for a period of time and all of the establishments voluntarily did so without

closure orders.

15. The Western U.P. Health Department is charged under the Michigan Food Law and by accreditation standards through MDARD to respond to consumer complaints. It has responded to 383 consumer complaints regarding businesses not complying to COVID-19 mitigation measures, of which 169 written complaints have been against Respondent Café Rosetta between July 15, 2020 and December 9, 2020, per the credible testimony of Ms. Rule. [Pet. Exh. 22].
16. Of the 169 complaints, one individual may have made more than one complaint, but the complaints were not all submitted by the same individual. Many of the complaints were from individuals who reported that they did not enter the establishment because they did not think it was safe to enter, per the credible testimony of Ms. Rule. [Pet. Exh. 22].
17. From October 1, 2020, to December 9, 2020, the Western U.P. Health Department received a total of 330 complaints against businesses in its jurisdiction. Of the 330 complaints, 149 complaints received were against Respondent Café Rosetta. [Pet. Exh. 25].
18. From October 1, 2020, to December 9, 2020, there were three businesses other than Café Rosetta with more than one complaint against them. MDARD issued cease and desist orders to those three businesses and they have all complied, per Ms. Rule's credible testimony. [Pet. Exh. 25].
19. Between October 1, 2019, and September 30, 2020, the Western U.P. Health Department received 53 consumer complaints. Café Rosetta was the business that had the most complaints submitted against it (13 complaints). [Pet. Exh. 26].
20. Between November 12 and November 27, 2020, the Calumet K-12 school was closed based on a COVID-19 outbreak. There were 58 positive cases and 26 probable cases among staff and students who were required to be quarantined. In addition, there were 345 persons with close contact who were required to be quarantined during that time period. All the other schools in the county remained open, per the credible testimony of Ms. Rule.
21. The Centers for Disease Control and Prevention (CDC) identifies a COVID-19 "hot spot" based on the prevalence and risk of infection in the community. Per Michigan Department of Health and Human Services (DHHS) data, as of December 8, 2020, Houghton County, which includes

Calumet, was categorized at the highest risk category for COVID-19 based on the number of cases per million in the population, according to the credible testimony of Ms. Rule.

22. Local hospital capacity is considered in determining whether a local public health hazard exists. If a hospital is getting near capacity, the health department would want additional mitigation measures to be implemented in the community. The hospitals in the U.P. are at 80% adult ICU beds occupied. One local hospital in Houghton County is at 40% adult ICU capacity, of which 100% occupancy are COVID-19 patients. The other local hospital is at 61% total beds occupied, with 100% of their adult ICU beds occupied at time of hearing, per the credible testimony of Ms. Rule.
23. The Western U.P. Health Department is concerned that gatherings can cause an imminent health hazard for the spread of COVID-19. With 448 cases per million in the population, that is considered "wide-spread" COVID-19 in the community.
24. 150 cases per million is used as the basis for closing schools, which is why the local high schools currently have virtual online learning. There are at a 7.1% positive test rate, with 16.3 new cases per day in the community, per the credible testimony of Ms. Rule.
25. In her former position, Ms. Rule personally conducted inspections at Respondent Café Rosetta. In her current position, she oversees and consults with other professional staff persons who inspect that establishment.
26. Café Rosetta has been in continuous non-compliance with the DHHS Emergency Order and other COVID-19 mitigation measures of the Western U.P. Health Department, even after several telephone calls and visits to the establishment by health department personnel.
27. On October 23, 2020, Cathryn A. Beer, Health Officer/Administrator for the Western U.P. Health Department, issued an Order of Immediate Cessation to Petitioner Café Rosetta, ordering it to temporarily close for three business days based on non-compliance with a September 8, 2020 compliance agreement, an October 5, 2020, DHHS Emergency Order, and the October 14, 2020, Michigan Department of Labor and Economic Opportunity (MDLEO) Emergency Rules pertaining to COVID-19. [Pet. Exh. 27].
28. In the Order of Immediate Cessation, the Health Officer/Administrator for



the Western U.P. Health Department made findings that Coronavirus is a communicable disease which causes COVID-19, that it can be transmitted from person to person, that in order to control and limit the spread of the Coronavirus from infected to uninfected people it is necessary to limit gatherings and have employees and customers wear face coverings and adhere to other requirements as outlined in the DHHS Emergency Order. [Pet. Exh. 27, p 2].

29. In the Order of Immediate Cessation, the Health Officer/Administrator for the Western U.P. Health Department further found that “[w]hen a business does not adhere to these mitigation strategies as outlined in MDHHS Emergency Order RE: Gathering Prohibition and Mask Order, it could reasonably be expected to allow for the spread of disease and create an imminent danger to public health.” [Pet. Exh. 27].
30. The Order of Immediate Cessation cited the MDLEO Emergency Rules that restaurants and bars must require six-feet of separation between parties or groups at different tables, prohibit access to common areas, and require staff to wear face coverings. [Pet. Exh. 27].
31. On November 15, 2020, the DHHS Director issued an Emergency Order under MCL 333.2253 to prevent the spread of COVID-19, which prohibited gatherings under certain specifications, required face coverings in public spaces, and prohibited inside (in-door) dining at food service establishments with certain limited exceptions. On December 7, 2020, the DHHS Emergency Order was extended through December 20, 2020. The exceptions for inside dining did not apply to Café Rosetta’s operation. [Pet. Exh. 23 & 24].
32. On November 18, 2020, Scott Barr, a registered sanitarian employed by the Western U.P. Health Department, conducted an inspection at Respondent Café Rosetta and determined that it was non-compliant with the DHHS Emergency Order under MCL 333.2253-Gatherings and Face Mask Order. On that date, Mr. Barr observed that Café Rosetta was open for inside dining, that customers were seated indoors, that its employees were not wearing face coverings, and that customers were leaving without having face coverings or masks. [Pet. Exh. 1].
33. On November 20, 2020, Mr. Barr conducted another inspection at Respondent Café Rosetta and observed that it was still open for inside dining in non-compliance with the DHHS Emergency Order under MCL 333.2253-Gatherings and Face Mask Order. [Pet. Exh. 2].

34. On November 23, 2020, Cathryn A. Beer, Health Officer/Administrator of the Western U.P. Health Department, issued to Respondent Café Rosetta a Warning Order Finding Imminent Danger to the Public Health and Requiring Corrective Action. The Warning Order required Respondent to immediately comply with all applicable public health laws and orders, including but not limited to the DHHS Emergency Order. [Pet. Exh. 3].
35. Ms. Rule credibly testified that Café Rosetta's ongoing non-compliance with the DHHS Emergency Order, including allowing inside dining and no face coverings for staff and employees, constituted an imminent danger to public health in light of the COVID-19 pandemic.
36. Ms. Rule acknowledged in her testimony that to date there have been no known confirmed positive cases of COVID-19 among Café Rosetta customers or staff. She credibly testified, however, that continued non-compliance by Café Rosetta with the order still posed an imminent threat to public health based on the risk of transmission for COVID-19.
37. On November 24, 2020, Mr. Barr conducted another inspection at Respondent Café Rosetta and observed that it remained open for inside dining in violation of the DHHS Emergency Order. He hand-delivered a copy of the Warning Order Finding Imminent Danger to Café Rosetta on that date. [Pet. Exh. 4].
38. After several months of non-compliance by Café Rosetta with mitigation measures and the Western U.P. Health Department's exhaustion of its enforcement capacity, the Director of Petitioner MDARD issued an Order to Cease and Desist Food Operations to Respondent Café Rosetta. In the Order to Cease and Desist, the MDARD Director stated that pursuant to a finding by the Western U.P. Health Department of imminent danger to the public health, Café Rosetta was ordered to immediately cease and desist all food operations. [Pet. Exh. 5].
39. At 1:30 p.m. on November 25, 2020, Ms. Rule, accompanied by a sheriff's deputy, hand-delivered the MDARD Cease and Desist Order to Ms. Heikkinen at Respondent Café Rosetta. At that time, Ms. Rule observed that the establishment was open to the public for indoor dining. She observed 11 customers seated and consuming food and beverage, three customers entering and ordering at the counter unmasked, two employees behind the front counter unmasked, and one unmasked employee serving customers. [Pet. Exh. 6].
40. On November 25, 2020, Ms. Rule read the Cease and Desist Order to

Ms. Heikkinen, stated the consequences for failure to comply, and asked Ms. Heikkinen if she intended to voluntarily comply with the Order. Ms. Heikkinen indicated that she was a single mother and needed to work, and then waived her hand indicating that she wanted Ms. Rule to leave, per Ms. Rule's credible testimony.

41. On November 27, 2020, at 11:15 a.m., Ms. Rule personally observed that Respondent Café Rosetta was in non-compliance with the Cease and Desist Order. Café Rosetta was open and serving customers on that date. There were 11 customers seated inside and consuming food and beverage, two customers entering unmasked who were served at the counter, and three unmasked employees. Ms. Rule took photographs of Café Rosetta that day to document her observations; the photographs show that Café Rosetta was open for business and that there were customers gathered indoors for dining. [Pet. Exh. 7].
42. On November 27, 2020, Ms. Rule served on Respondent Café Rosetta a DHHS Penalty Notice for Violation of November 15 Emergency Order. [Pet. Exh. 7].
43. On November 28, 2020, Barb Goodson, an employee of the Western U.P. Health Department, conducted follow-up surveillance and documented with photographs that Café Rosetta still remained open for inside dining in violation of the MDARD Cease and Desist Order and the DHHS Emergency Order. [Pet. Exh. 8].
44. On November 30, 2020, Mr. Barr conducted another inspection at Café Rosetta and observed that it still remained open for inside dining in violation of the MDARD Cease and Desist Order and the DHHS Emergency Order. He documented the non-compliance by Café Rosetta on that date with photographs of the establishment's exterior and interior. [Pet. Exh. 9].
45. On December 1, 2, 3, 4 and 7, 2020, employees of the Western U.P. Health Department conducted further surveillance of the Café Rosetta establishment and determined that it was still open for business and allowing inside dining in violation of the MDARD Cease and Desist Order and the DHHS Emergency Order. [Pet. Exh. 10, 11, 12, 15, 17 & 18].
46. On December 2, 2020, the Director of Petitioner MDARD issued an Emergency Suspension Order Pursuant to MCL 289.4125 and MCL 24.292(2) and Notice of Hearing, finding in part that, as of that date, there had been over 340,000 confirmed cases of COVID-19 in the state of

Michigan, resulting in over 8,900 deaths, and that there is currently no vaccine or anti-viral treatment for this disease available to the general public. The Director found that in spite of the Western U.P. Health Department's November 23, 2020, Warning Order and the November 25, 2020 MDARD Cease and Desist Order, Respondent Café Rosetta has continued to offer in-door dining and not requiring customers or employees to wear face coverings, constituting an imminent threat to the public health, safety and welfare. [Pet. Exh. 14].

47. In issuing the Emergency Suspension Order, Petitioner MDARD took into consideration Respondent Café Rosetta's violation of the DHHS Emergency Order as an imminent threat to the public health, safety and welfare, the findings by the Western U.P. Health Department that Café Rosetta's conduct constituted an imminent threat to the public health, and the investigation facts submitted to MDARD by the Western U.P. Health Department, per the credible testimony of Mr. Padden.
48. Under Executive Director 2020-08, MDARD must consider whether the public health, safety and welfare in a given instance requires summary suspension. Petitioner MDARD found that the threat of transmission of the Coronavirus or COVID-19 by Café Rosetta justified emergency suspension of the food establishment license, per the credible testimony of Mr. Padden.
49. On December 7, 2020, Jackson Caskey, an employee with the Western U.P. Health Department, conducted an inspection at Café Rosetta and observed that it remained open to the public for inside dining in violation of the Cease and Desist Order, the DHHS Emergency Order, and the MDARD Emergency Suspension Order. [Pet. Exh. 19].
50. On December 8, 2020, Mr. Barr conducted another inspection at Café Rosetta and observed that it remained open to the public for inside dining contrary to the MDARD Cease and Desist Order, the DHHS Emergency Order, and the MDARD Emergency Suspension Order. He took photographs of the exterior of the business, showing an "open" sign and several cars parked next to the business. [Pet. Exh. 20].
51. Melissa Keranen is a bookkeeper for Café Rosetta. She credibly testified that Café Rosetta is not in good financial position. It has about 30 employees who work mostly on a part-time basis. In her opinion, if Café Rosetta were shut down for two weeks it would likely go out of business.
52. At the present time the COVID-19 pandemic is continuing and

Respondent's ongoing non-compliance with COVID-19 mitigation measures such as face coverings, which are required by the state and local health departments for licensed food establishments, remains an imminent to the public health, safety, and welfare.

53. Respondent Café Rosetta has not posed any operational reason for its non-compliance with COVID-19 mitigation measures, other than financial or business concerns.
54. There is no basis in the record to conclude that Respondent's management or staff misunderstood the state and local health department requirements or the MDARD Cease and Desist Order. The testimony of both Ms. Rule and Mr. Barr was clear that the owner and manager of Café Rosetta, Ms. Heikkinen, received and was aware of the relevant orders. Their testimony is consistent that Ms. Heikkinen has indicated financial concerns as a single parent as the reason for continued non-compliance.
55. The record evidence does not show that Respondent attempted to comply with the state and local health department requirements to prevent the spread of the Coronavirus or COVID-19.

### **CONCLUSIONS OF LAW**

Under Section 4125(4) of the Michigan Food Law, MCL 289.4125(4), *supra*, the Administrative Law Judge as the presiding officer shall dissolve the summary suspension order unless sufficient evidence is presented that an imminent threat to the public health, safety, or welfare exists requiring emergency action and a continuation of the order. "Sufficient evidence" for purposes of summary suspension under the Section 92 of the APA has been viewed as a preponderance of the evidence. As the Michigan Supreme Court has stated, "[p]roof by a preponderance of the evidence requires that the fact finder believe that the evidence supporting the existence of the contested fact outweighs the evidence supporting its nonexistence." *Blue Cross and Blue Shield of Michigan v Milliken*, 422 Mich 1; 367 NW2d 1 (1985).

Therefore, Petitioner MDARD has the burden of proof in this matter to establish by a preponderance of evidence that the public health, safety, or welfare requires emergency action and a continuation of the food establishment license suspension. See MCL 289.4125(4) and MCL 24.292(2). The undersigned concludes that Petitioner has met its burden of proof.

Based on the above findings of fact, the undersigned concludes that the record evidence is clear and undisputed that Respondent Café Rosetta has failed to comply with COVID-19 mitigation measures required for the protection of the public, contrary to

the repeated instructions, warnings, cease and desist and other orders of the local health department (Western U.P. Health Department), the Michigan DHHS, and Petitioner MDARD. The record evidence shows that for several months Respondent Café Rosetta has not complied with both local and state health department requirements that were established to prevent the spread of the Coronavirus or COVID-19 to employees, customers, and the community. The record evidence does not show that the non-compliance was the result of any misunderstanding of the health department requirements or orders.

The record evidence further demonstrates that Petitioner's Emergency Suspension Order is not based solely upon Respondent's non-compliance with another authority's order or law, but it is based upon the detailed and well-documented findings by MDARD, through the accredited local health department, of an imminent public health threat posed by Respondent's ongoing non-compliance with COVID-19 pandemic mitigation measures.

The case of *Associated Builders & Contractors of Michigan, et al v Whitmer*, opinion of the Court of Claims, issued June 4, 2020 [Case No. 20-000092-MZ], which has been referenced by Respondent, is distinguishable from the present matter. The record here shows that Petitioner MDARD is not "effectively bootstrapping" penalties into the Michigan Food Law based on Respondent's violation of another statute (the Public Health Code) or order of another authority (DHHS). Rather, the Michigan Food Law under MCL 289.4125 authorizes emergency suspension of a food establishment license based on an imminent threat to the public health, safety, or welfare.

The record evidence appears clear that, in addition to the question of non-compliance with the DHHS Emergency Order, Petitioner MDARD has made its own findings through the local health department's detailed and ongoing investigations regarding imminent threat to the public and has acted within its own authority under the Michigan Food Law, MCL 289.4125 and MCL 289.4127. The record evidence shows that Petitioner MDARD has taken into account Respondent's non-compliance with the DHHS Emergency Order, but that it is not the sole basis for the emergency suspension order. Therefore, Petitioner has met its burden of proof to show sufficient evidence for the issuance and continuance of the emergency suspension order.

## **DECISION**

Based on the above findings of fact and conclusions of law, a preponderance of the evidence shows that Respondent Café Rosetta has engaged in conduct that constitutes an ongoing imminent threat to the public health, safety, and welfare under section 4125 of the Michigan Food Law, MCL 289.4125. Petitioner's emergency suspension order is therefore properly continued under that statute and MCL 24.292.

20-025457

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**ORDER**

**NOW THEREFORE, IT IS HEREBY ORDERED** that Respondent's petition to dissolve the MDARD Director's Emergency Suspension Order issued on December 2, 2020, shall be and hereby is DENIED, and that the Order is therefore continued under the provisions of MCL 289.4125 and MCL 289.4127.



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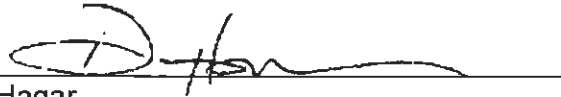
**Lauren G. Van Steel**  
**Administrative Law Judge**

**APPEAL RIGHTS**

Pursuant to MCL 24.304, if a party seeks appeal of the above order, a petition for review shall be filed in a court of proper jurisdiction within 60 days after the date of mailing notice of the order, or if a rehearing before the agency is timely requested, within 60 days after delivery or mailing notice of the decision or order thereon. See also, Mich Admin Code, R 792.10137.

**PROOF OF SERVICE**

I certify that I served a copy of the foregoing document upon all parties and/or attorneys to their last-known address in the manner specified below, this 21<sup>st</sup> day of December, 2020.



D. Hagar  
**Michigan Office of Administrative  
Hearings and Rules**

**Via Electronic Mail:**

Cafe Rosetta, LLC  
Attn: Amy B. Heikkinen, Manager  
102 5th Street  
Calumet, MI 49913  
(caferosetta@gmail.com)

Danielle Allison-Yokom  
Department of Attorney General  
Licensing and Regulation Division  
525 W. Ottawa, 2nd Fl., P.O. Box 30754  
Lansing, MI 48909  
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5600 West Mount Hope Highway  
Lansing, MI 48917  
(steve@kallmanlegal.com)



# EXHIBIT 6

**AFFIDAVIT OF KRISTI PAINTER**

I, Kristi Painter, employee of the Michigan Department of Agriculture and Rural Development (MDARD), swear and attest under penalty of perjury as follows:

1. I am over the age of eighteen and have personal knowledge of the facts stated in this affidavit and, if called as a witness, I am competent to testify accordingly.

2. I am currently employed as a Food Field Scientist with MDARD's Food and Dairy Division.

3. On December 22, 2020, as part of my job duties, I conducted an undercover on-site compliance assessment visit to Café Rosetta located at 102 Fifth Street in Calumet, Michigan.

4. The purpose of my visit to Café Rosetta was to assess Café Rosetta's compliance with a summary suspension of its food license.

5. I entered Café Rosetta at approximately 11:45 a.m., and waited in line to order food to-go. During my visit, I observed that no employees or customers within Café Rosetta were wearing face coverings. Additionally, I observed that all of Café Rosetta's tables were available for indoor dine-in service. Two of the seven tables remained unoccupied and there were approximately 17 customers seated while eating and/or drinking.

6. No social distancing was observed during my visit, although there was a sign posted near the checkout asking individuals to remain at least 6 feet apart.

I did not observe any signs encouraging mask use, nor any other signs regarding social distancing.

7. I observed a tip-jar like container that was labeled "Legal Fund—join our fight to stand up for your rights".

8. I ordered and paid for a half sandwich and soup. The total cost of my order as reflected on my receipt was \$8.48 which included \$0.48 of tax.

9. I waited for my order to be ready at one of the two unoccupied tables.

10. During my visit to Café Rosetta on December 22, 2020 I took two photos. One photo shows customers seated inside of Café Rosetta eating and/or drinking while another shows customers interacting with employees of Café Rosetta at their service counter. Ex./Encl. 1 and 2.

11. After receiving my to-go order I went to my vehicle where I took a picture of some of the food that I ordered as well as a photo of my receipt. Ex./Encl. 3 and 4.

12. Based on all of my observations, I determined that Café Rosetta was operating a food establishment without a license.

13. Later that day I filled out an AG-31, Special Report, form documenting my compliance assessment. Ex./Encl. 5.

I DECLARE THE ABOVE STATEMENTS TO BE TRUE TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

*Kristi Painter*

Kristi Painter  
Food and Dairy Division  
Michigan Department of Agriculture  
and Rural Development

Subscribed and sworn to by this 23 day of  
December, 2020.

*Jennifer L. Williams*  
\_\_\_\_\_  
Jennifer L. Williams, Notary Public  
Iron County, Michigan

My commission expires: \_\_\_\_\_  
Acting in the county of \_\_\_\_\_  
**JENNIFER L. WILLIAMS**  
**NOTARY PUBLIC-STATE OF MI**  
**COUNTY OF IRON**  
**Commission Expires 5/23/25**



# EXHIBIT 1



## **EXHIBIT 2**





# EXHIBIT 3



**CAFE ROSETTA**

102 5TH STREET  
CALUMET, MI 49913  
(906) 337-5500  
caferosetta.com

Dec 22, 2020  
11:45 AM

Ticket: #6  
Receipt ebZR

**PURCHASE**

**TO GO**

Lunch Special  
Half Sandwich and Cup of Soup,  
Turkey Swiss, Bev's Bread  
White bean soup **\$8.00**

Subtotal **\$8.00**  
Tax 1 **\$0.48**

**\$8.48**  
**\$20.00**  
**\$11.52**

Adventure begins with coffee.

Thank you for choosing us to fill your belly.  
Return Policy: No returns

# EXHIBIT 4



## CAFE ROSETTA

102 5TH STREET  
CALUMET, MI 49913  
(906) 337-5500  
caferosetta.com

Dec 22, 2020  
11:45 AM

### PURCHASE

Ticket: #6  
Receipt ebZR

### TO GO

Lunch Special \$8.00  
Half Sandwich and Cup of Soup,  
Turkey Swiss, Bev's Bread  
White bean soup

Subtotal \$8.00  
Tax 1 \$0.48

Total \$8.48  
Cash \$20.00  
Change \$11.52

Adventure begins with coffee.  
Thank you for choosing us to fill your belly.  
Return Policy: No ref

# EXHIBIT 5



MICHIGAN DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT  
 FOOD AND DAIRY DIVISION  
 P.O. BOX 30017  
 LANSING, MI 48909  
 800-292-3939

**SPECIAL REPORT**

Establishment No. 226020	(In accordance with Act 380, Public Acts of 1965 as amended and in accordance with Act 92, Public Acts of 2000 as amended)	Date 12-22-2020	Time 11:45
Person or Firm Name Cafe Rosetta		Inspector Kristi Painter	
Street Address 102 Fifth St.	City Calumet	Zip 49913	County Houghton
Subject Compliance Assessment			
<p>On December 22, 2020 Inspector Kristi Painter was instructed by Supervisor Karla Horne to conduct an undercover on-site visit to Cafe Rosetta located in Calumet to assess the facilities compliance with a summary suspension of their food license. Inspector Painter entered the facility at approximately 11:45 and waited in line to order food to-go. It was observed that all patrons and employees did not have face coverings at the time of this visit in this establishment. All tables (approximately 7) were available for indoor dine-in services. Only two tables were unoccupied. There were approximately 17 customers seated while eating and/or drinking. The facility has a tip jar labeled "Legal Fund--join our fight to stand up for your rights". No social distancing was observed during the inspection with patrons and employees, although there is a sign posted near the checkout that says to stay at least 6 feet apart. No other signs were observed this day to encourage mask wearing or social distancing. Inspector Painter waited at an unoccupied table for the food to-go and left the facility at approximately 12:00.</p> <p>The firm was operating a food establishment this day in violation of the summary suspension of its food license.</p> <p>Prior to the on-site visit, Inspector Painter conducted a review of the firm which included an interview about this location defying the MDHHS orders and continuing indoor dining. This can be found at this link:  <a href="https://www.uppermichiganssource.com/2020/12/18/coffee-shop-owner-defies-mdhhs-order-continues-indoor-dining/">https://www.uppermichiganssource.com/2020/12/18/coffee-shop-owner-defies-mdhhs-order-continues-indoor-dining/</a></p> <p>Photos were taken on this day which include:</p> <ol style="list-style-type: none"> <li>1. The food purchased with receipt (20201222_caferosettafood)</li> <li>2. The receipt of the food purchased (20201222_caferosettareceipt)</li> <li>3. A table of customers seated for dine-in services (20201222_caferosettapatrons)</li> <li>4. The service counter with employees and customers (20201222_caferosettaservicecounter)</li> </ol>			
Copy Received By (signature)	Division FDD	Inspector (signature) Kristi Painter	Phone 906-214-8651

\*Inspector Note: In order to finalize the document, use the "Print to PDF" feature under the printer options menu in the file tab.

# EXHIBIT 7

# Considerations for Restaurant and Bar Operators

Updated Dec. 16, 2020



As restaurants and bars resume and continue operations in some areas of the United States, CDC offers the following considerations for ways in which operators can reduce risk for employees, customers, and communities and slow the spread of COVID-19. Restaurants and bars can determine, in collaboration with [state, local, territorial, or tribal health officials](#), whether and how to implement these considerations, making adjustments to meet the needs and circumstances of the local community. Implementation should be guided by what is feasible, acceptable, and tailored to the needs of each community. These considerations are meant to supplement—not replace—any state, local, territorial, or tribal health and safety laws, rules, and regulations with which businesses must comply.

Guidance for customers on reducing the risk of spreading COVID-19 when dining at a restaurant can be found [here](#).

## Guiding Principles to Keep in Mind

The more an individual interacts with others, and the longer that interaction, the higher the [risk of COVID-19 spread](#). Masks may reduce the risk of COVID-19 spread when they are consistently used by customers and employees, especially when social distancing measures are difficult to maintain. The risk of COVID-19 spread increases in a restaurant or bar setting as interactions within 6 feet of others increase, as described below. Masks may reduce the risk of COVID-19 spread when worn in any of these risk scenarios.

- **Lowest Risk:** Food service limited to drive-through, delivery, take-out, and curbside pick up.
- **More Risk:** Drive-through, delivery, take-out, and curbside pick up emphasized. On-site dining limited to outdoor seating. Seating capacity reduced to allow tables to be spaced at least 6 feet apart.
- **Higher Risk:** On-site dining with indoor seating capacity reduced to allow tables to be spaced at least 6 feet apart. And/or on-site dining with outdoor seating, but tables not spaced at least six feet apart.
- **Highest Risk:** On-site dining with indoor seating. Seating capacity not reduced and tables not spaced at least 6 feet apart.

COVID-19 is mostly spread when people are physically near (within 6 feet) a person with COVID-19 or have direct contact with that person. When people with COVID-19 cough, sneeze, sing, talk, or breathe, they produce [respiratory droplets](#). Infections occur mainly through exposure to respiratory droplets when a person is in close contact with someone who has COVID-19.

There is evidence that under certain conditions, people with COVID-19 seem to have infected others who were more than 6 feet away. This is called airborne transmission. These transmissions occurred within enclosed spaces that had inadequate ventilation. Available data indicate that it is much more common for the virus that causes COVID-19 to spread through close contact with a person who has COVID-19 than through airborne transmission.

Respiratory droplets can also land on surfaces and objects. It is possible that a person could get COVID-19 by touching a surface or object that has the virus on it and then touching their own mouth, nose, or eyes. Spread from touching surfaces is not thought to be a common way that COVID-19 spreads.

Fortunately, there are a number of actions operators of restaurants and bars can take to help lower the risk of COVID-19 exposure and spread. Personal prevention practices (such as [handwashing](#), [staying home when sick](#), and [wearing masks](#)) and workplace prevention practices, like environmental [cleaning and disinfection](#), are important principles of preventing the spread of COVID-19.

## Promoting Behaviors that Reduce Spread



Restaurants and bars may implement several strategies that reduce the spread of COVID-19 among employees and customers.

- **Staying Home when Appropriate**

- Educate employees about when they should **stay home** and when they can return to work.
  - Actively encourage employees who are sick or have recently had a **close contact** with a person with COVID-19 to stay home. Develop policies that encourage sick employees to stay at home (for example, sick leave) without fear of reprisal, and ensure employees are aware of these policies. See the Maintaining Healthy Operations section below for suggestions.
  - **Employees should stay home** if they have tested positive for or are showing COVID-19 symptoms.
  - Employees who have recently had a **close contact** with a person with COVID-19 should also **stay home and monitor their health**.
  - CDC's criteria can help inform when employees may return to work:
    - **If they have been sick with COVID-19**
    - **If they have recently had close contact with a person with COVID-19**

- **Masks**

CDC recommends **masks to reduce the risk of COVID-19 spread**. Masks are currently recommended for employees and for customers as much as possible when not eating or drinking and when social distancing measures are difficult to maintain. **These masks** (sometimes called cloth masks) are meant to protect other people in case the wearer is infected. They are not appropriate substitutes for masks used by workers for personal protective equipment (PPE) such as surgical masks or respirators. (More information on masks used for PPE can be found [here](#).)

- Consider requiring the use of **masks** among all staff. Masks are most essential in times when physical distancing is difficult. Information should be provided to staff on **proper use, removal, and washing of masks**.
  - Note: Masks should not be placed on:
    - Babies and children younger than 2 years old
    - Anyone who has trouble breathing or is unconscious
    - Anyone who is incapacitated or otherwise unable to remove the mask without assistance
  - Employees should avoid touching their masks once they are on their faces. Employees should wash their hands with soap and water for at least 20 seconds after touching masks on their faces.




- **Hand Hygiene and Respiratory Etiquette**

- Require frequent employee **handwashing** (e.g. before, during, and after preparing food; after touching garbage) with soap and water for at least 20 seconds and increase monitoring to ensure adherence.
- Ensure gloves are worn by employees when they are completing these activities:
  - Removing garbage bags or handling and disposing of trash
  - Handling used or dirty food service items
  - **Cleaning and disinfecting surfaces**; read and follow the directions on the label to ensure safe and effective use of disinfectant.
- Employees should always wash their hands with soap and water for at least 20 seconds after removing gloves.
- Encourage employees to cover coughs and sneezes with a tissue (or use the inside of their elbow). Used tissues should be thrown in the trash and hands washed immediately with soap and water for at least 20 seconds.
- If soap and water are not readily available for handwashing, use hand sanitizer that contains at least 60% alcohol.
- Employees should avoid touching their eyes, nose, and mouth with gloved or unwashed hands.

- **Adequate Supplies**

- Ensure adequate supplies to support **healthy hygiene**. Supplies include soap, hand sanitizer containing at least 60% alcohol (placed on every table, if supplies allow), paper towels, tissues, disinfectant wipes, **masks** (as feasible), and no-touch/foot pedal trash cans.


- **Signs and Messages**

- Post **signs** in highly visible locations (e.g., at entrances, in restrooms) that **promote everyday protective measures**  for both employees and customers and describe how to **stop the spread**  of germs such as by **properly wearing a mask**  and **properly washing hands**.
- Include messages (for example, **videos**) about behaviors that prevent spread of COVID-19 when communicating with vendors, staff, and customers (such as on business websites, in emails, and on **social media accounts**).

- Communicate the prevention steps the restaurant or bar is taking and any changes in protocols on business websites, in emails, and on social media accounts.
- Find free CDC print and digital resources at the [bars and restaurant page](#), as well as on CDC's [communications resources main page](#).

## Maintaining Healthy Environments

Restaurants and bars may implement several strategies to maintain healthy environments.

- **Cleaning and Disinfection**
  - **Clean and disinfect** frequently touched surfaces (e.g., door handles, cash registers, workstations, sink handles, bathroom stalls) at least daily, and as much as possible. Clean shared objects (e.g., payment terminals, tables, countertops/bars, receipt trays, condiment holders) between each use.
    - Continue to follow all required safety laws, regulations, and rules.
    - Use products that meet [EPA disinfection criteria](#)  and that are appropriate for the surface. Allow the disinfectant to remain on the surface for the contact time recommended by the manufacturer. **Always read and follow the directions on the label** to ensure safe and effective use.
    - When cleaning and disinfecting, wear gloves appropriate for the disinfectant being used. Additional personal protective equipment may also be needed.
    - Establish a disinfection routine and train staff on proper cleaning timing and procedures to ensure safe and correct application of disinfectants.
    - Wash, rinse, and sanitize used or dirty food contact surfaces with an EPA-approved food contact surface sanitizer. If a food-contact surface must be disinfected for a specific reason, such as a blood or bodily fluid cleanup or deep clean in the event of likely contamination with SARS-CoV-2, use the following procedure: wash, rinse, disinfect according to the label instructions with a product approved for food contact surfaces, rinse, then sanitize with a food-contact surface sanitizer.
    - Ensure that cleaning or disinfecting product residues are not left on table surfaces. Residues could cause allergic reactions or cause someone to ingest the chemicals.
  - Develop a schedule for increased routine cleaning and disinfection.
  - Ensure **safe and correct use** and storage of disinfectants to avoid food contamination and harm to employees and other individuals. This includes storing products securely away from children.
  - Use gloves when removing garbage bags or handling and disposing of trash. **Wash hands** after removing gloves.
- **Shared Objects**
  - Discourage sharing of items that are difficult to clean, sanitize, or disinfect.
  - Limit any sharing of food, tools, equipment, or supplies by staff members.
  - Ensure adequate supplies to minimize sharing of high-touch materials (e.g., serving spoons) to the extent possible; otherwise, limit use of supplies and equipment by one group of workers at a time and clean and disinfect between use.
  - Avoid using or sharing items that are reusable, such as menus, condiments, and any other food containers. Instead, use disposable or digital menus (menus viewed on cellphones), single serving condiments, and no-touch trash cans and doors.
  - Use touchless payment options as much as possible, if available. Ask customers and employees to exchange cash or card payments by placing on a receipt tray or on the counter rather than by hand to avoid direct hand to hand contact. **Clean and disinfect** frequently touched surfaces such as counters, or hard surfaces between use. If pens are needed for some purposes, disinfect between uses and/or encourage customers to use their own pens.
  - Use disposable food service items (e.g., utensils, dishes, napkins, tablecloths). If disposable items are not feasible or desirable, ensure that used or dirty non-disposable food service items are handled with gloves and washed, rinsed, and sanitized to meet food safety requirements. Change and launder linen items (e.g., napkins and tablecloths) after each customer or party's use. Employees should **wash their hands** after removing their gloves or after handling used food service items.
  - Avoid use of food and beverage utensils and containers brought in by customers.
- **Ventilation**

As noted above, available data indicate that it is much more common for the virus that causes COVID-19 to spread

through close contact with a person who has COVID-19 than through airborne transmission. There is evidence that under certain conditions, people with COVID-19 seem to have infected others who were more than 6 feet away. This is called airborne transmission. These transmissions occurred in indoor spaces with inadequate ventilation. In general, being outdoors and in spaces with good ventilation reduces the risk of exposure to the virus that causes COVID-19.

- Ensure that **ventilation systems operate properly** and increase circulation of outdoor air as much as possible, for example by opening windows and doors and *prioritizing outdoor seating*. Do not open windows and doors if doing so poses a safety or health risk to customers or employees (e.g., risk of falling or triggering asthma symptoms).
- Consider improving the **engineering controls** using the building ventilation system. Consult with experienced heating, ventilating, and air-conditioning (HVAC) professionals when considering changes to HVAC systems and equipment. This may include some or all of the following activities:
  - Increase total airflow supply to occupied spaces, whenever feasible.
  - Increase outdoor air ventilation, using caution in highly polluted areas. With a lower occupancy level in the building, this increases the effective dilution ventilation per person.
  - Disable demand-controlled ventilation (DCV) controls that reduce air supply based on occupancy or temperature during occupied hours.
  - Open minimum outdoor air dampers to reduce or eliminate HVAC recirculation, if practical. In mild weather, this will not affect thermal comfort or humidity. However, this may be difficult to do in cold, hot, or humid weather.
  - Improve central air filtration to MERV-13 or to as high as possible without significantly diminishing design airflow.
- Inspect filter housing and racks to ensure appropriate filter fit and check for ways to minimize filter bypass.
- Check filters to ensure they are within service life and appropriately installed.
- Consider running the HVAC system at maximum outside airflow for 2 hours before and after occupied times.

Additional guidance can be found in [Ventilation in Buildings](#) and [ASHRAE Standard 62.1, Ventilation for Acceptable Indoor Air Quality](#) .

- **Water Systems**
  - To minimize the risk of **Legionnaires' disease** and other diseases associated with water, **take steps** to ensure that all water systems and features (e.g., sink faucets, decorative fountains, drinking fountains) are safe to use if there has been prolonged facility shutdown.
- **Modified Layouts and Procedures**
  - Change restaurant and bar layouts to ensure that all customer parties remain at least 6 feet apart (e.g., removing tables/stools/chairs, marking tables/stools/chairs that are not for use).
  - Limit seating capacity to allow for **social distancing**.
  - Offer drive-through, curbside take out, or delivery options as applicable. Prioritize outdoor seating as much as possible.
  - Ask customers to wait in their cars or away from the establishment while waiting to pick up food or when waiting to be seated. Inform customers of food pickup and dining protocols on the business's website and on posted signs.
  - Discourage crowded waiting areas by using phone app, text technology, or signs to alert patrons when their table is ready. Avoid using "buzzers" or other shared objects.
  - Consider options for dine-in customers to order ahead of time to limit the amount of time spent in the establishment.
  - Avoid offering any self-serve food or drink options, such as buffets, salad bars, and drink stations. This limits the use of shared serving utensils, handles, buttons, or touchscreens and helps customers to stay seated and at least 6 feet apart from people who do not live in their household.
- **Physical Barriers and Guides**
  - Install physical barriers, such as sneeze guards and partitions, particularly in areas where it is difficult for individuals to remain at least 6 feet apart. Barriers can be useful in restaurant kitchens and at cash registers, host stands, or food pickup areas where maintaining physical distance of at least 6 feet is difficult.
  - Provide physical guides, such as tape on floors or sidewalks and signage, to ensure that individuals remain at least 6 feet apart. Consider providing these guides where lines form, in the kitchen, and at the bar.
- **Communal Spaces**

- Close shared spaces such as break rooms, if possible; otherwise stagger use, require mask use, and [clean and disinfect](#) between use.
- Consistent with applicable law, develop policies to protect the privacy of persons at [higher risk for severe illness](#) in accordance with applicable privacy and confidentiality laws and regulations.

## Maintaining Healthy Operations

Restaurants and bars may consider implementing several strategies to maintain healthy operations.

- **Protections for Employees at Higher Risk for Severe Illness from COVID-19**
  - Offer options for employees at [higher risk for severe illness](#) (including older adults and people of all ages with certain underlying medical conditions) that limits their exposure risk (e.g., modified job responsibilities such as managing inventory rather than working as a cashier, or managing administrative needs through telework).
  - Consistent with applicable law, develop policies to protect the privacy of persons at [in accordance with applicable privacy and confidentiality laws and regulations](#).
- **Regulatory Awareness**
  - Be aware of local or state policies and recommendations related to group gatherings to determine if events can be held.
- **Staggered or Rotated Shifts and Sittings**
  - Rotate or stagger shifts to limit the number of employees in the restaurant or bar at the same time.
  - Stagger and limit dining times to minimize the number of customers in the establishment.
  - When possible, use flexible worksites (e.g., telework) and flexible work hours (e.g., staggered shifts) to help establish policies and practices for social distancing (maintaining distance of approximately 6 feet) between employees and others, especially if social distancing is recommended by state and local health authorities.
- **Gatherings**
  - Avoid group events, gatherings, or meetings where social distancing of at least 6 feet between people who do not live in the same household cannot be maintained. See the Modified Layouts and Procedures section above for suggestions on social distancing.
- **Travel and Transit**
  - Encourage employees to use transportation options that minimize close contact with others (e.g., walking or biking, driving or riding by car—alone or with household members only).
  - For employees who commute to work using public transportation or ride sharing:
    - Ask employees to follow the CDC guidance on how to [protect yourself when using transportation](#) and to [wear masks on public transportation](#).
    - Ask them to [wash their hands](#) as soon as possible after their trip.
    - Consider allowing employees to shift their hours so they can commute during less busy times.
- **Designated COVID-19 Point of Contact**
  - Designate a staff person for each shift to be responsible for responding to COVID-19 concerns. All staff members should know who this person is and how to contact them.
- **Communication Systems**
  - Put systems in place for:
    - Consistent with applicable law and privacy policies, having staff self-report to the establishment's point of contact if they have [symptoms](#) of COVID-19, a positive test for COVID-19, or were exposed to someone with COVID-19 within the last 14 days in accordance with [health information sharing regulations for COVID-19](#) [☑](#) (e.g. see "Notify Health Officials and Close Contacts" in the [Preparing for When Someone Gets Sick](#) section below), and other applicable privacy and confidentiality laws and regulations.
    - Notifying staff, customers, and the public of business closures, and restrictions in place to limit COVID-19 exposure (e.g., limited hours of operation).
- **Leave (Time Off) Policies**
  - Implement flexible sick leave policies and practices that enable employees to stay home when they are sick, have been exposed, or are [caring for someone who is sick](#).

- Examine and revise policies for leave, telework, and employee compensation.
- Leave policies should be flexible and not punish people for taking time off and should allow sick employees to stay home and away from co-workers. Leave policies should also account for employees who need to stay home with their children if there are school or childcare closures, or to care for sick family members.
- Develop policies for return-to-work after COVID-19 illness. CDC's [criteria to discontinue home isolation](#) can inform these policies.
- **Back-Up Staffing Plan**
  - Monitor absenteeism of employees, cross-train staff, and create a roster of trained back-up staff.
- **Staff Training**
  - Train all employees in safety actions.
  - Conduct training virtually, or ensure that [social distancing](#) is maintained during training.
- **Recognize Signs and Symptoms**
  - Conduct daily health checks (e.g., temperature screening and/or [symptom checking](#)) of staff safely and respectfully, and in accordance with any applicable privacy laws and regulations.
    - Consider using examples of screening methods in CDC's [General Business FAQs](#) as a guide.
- **Support Coping and Resilience**
  - Promote employees eating healthy, exercising, getting sleep, and finding time to unwind.
  - Encourage employees to talk with people they trust about their concerns and how they are feeling.
  - Consider posting signs for the national distress hotline: call or text 1-800-985-5990.

## Preparing for Sick Employees

Restaurants and bars may implement several strategies to prepare for when someone gets sick.

- **Advise Sick Employees of Home Isolation Criteria**
  - Communicate to sick employees that they should not return to work until they have met CDC's [criteria to discontinue home isolation](#).
- **Isolate and Transport Those Who Are Sick**
  - Make sure that employees know they should not come to work if they are sick, and they should notify their manager or other designated COVID-19 point of contact if they become sick with COVID-19 [symptoms](#), test positive for COVID-19, or have been [exposed](#) to someone with COVID-19 or have been exposed to someone with COVID-19 symptoms or a confirmed or suspected case.
  - Immediately separate employees or customers with COVID-19 [symptoms](#) (i.e., fever, cough, shortness of breath). Individuals who are sick should go home or to a healthcare facility, depending on how severe their symptoms are, and follow [CDC guidance for caring for oneself and others](#) who are sick.
- **Clean and Disinfect**
  - Close off areas used by a sick person and do not use these areas until after [cleaning and disinfecting](#) them.
  - Wait at least 24 hours before cleaning and disinfecting. If 24 hours is not feasible, wait as long as possible. Ensure [safe and correct use and storage of cleaning and disinfection products](#) [\[1\]](#), including storing them securely away from children.
- **Notify Health Officials and Close Contacts**
  - In accordance with state, territorial, tribal, or local laws, restaurant and bar operators should notify [the health officials](#) in their jurisdiction and staff immediately of any case of COVID-19 among employees, while maintaining confidentiality in accordance with the [Americans with Disabilities Act \(ADA\)](#) [\[2\]](#).
  - Advise those who have had [close contact](#) with a person diagnosed with COVID-19 to stay home and [self-monitor for symptoms](#), and follow [CDC guidance](#) if symptoms develop. Critical infrastructure workers may refer to [CDC Guidance for Critical Infrastructure Workers](#), if applicable.
  - Consider collaborating with health officials in your jurisdiction to determine whether and how to implement employee [COVID-19 testing strategies](#) and which one(s) would be most appropriate for your circumstances.

## Communication Resources

RESTAURANT AND BARS FOLLOW THESE 5 SAFETY STEPS  
to keep us all healthy

RESTAURANTS AND BARS  
Reduce the Spread of COVID-19

Letter for staff



## 5 Safety Steps for Staff

Restaurants and Bars: follow these 5 safety steps to keep us all healthy

Download [PDF – 290 KB]



## Daily Checklist for Managers of Restaurants and Bars

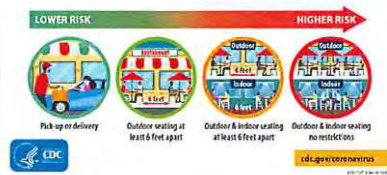
Managers can use this helpful checklist

Download [PDF – 1 page]

## Other Resources

- Latest COVID-19 information
- Cleaning and Disinfection
- Guidance for Businesses and Employers
- COVID-19 Prevention
- Handwashing information
- Face coverings
- Social Distancing
- COVID-19 Frequently Asked Questions
- Frequently Asked Questions for Businesses
- Persons at higher risk
- Managing Stress and Coping
- HIPAA and COVID-19
- CDC communication resources
- Community Mitigation

Last Updated Dec. 16, 2020



## Assess Your Risk

Use this graphic to assess risk

Download [image 586 KB]



## Letter to Staff Template

Send out a customized letter to your staff to inform them about steps taken to protect them.

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