BOARD OF STATE CANVASSEERS
APRIL 30, 2020

AGENDA ITEM #6
See attached
EXECUTIVE ORDER

No. 2020-42

Temporary requirement to suspend activities that are not necessary to sustain or protect life

Reissuance of Executive Order 2020-21

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 or antiviral treatment for this disease.

On March 10, 2020, the Michigan Department of Health and Human Services identified the first two presumptive-positive cases of COVID-19 in Michigan. On that same day, I issued Executive Order 2020-4. This order declared a state of emergency across the state of Michigan under section 1 of article 5 of the Michigan Constitution of 1963, the Emergency Management Act, 1976 PA 390, as amended, MCL 30.401 et seq., and the Emergency Powers of the Governor Act of 1945, 1945 PA 302, as amended, MCL 10.31 et seq.

In the three weeks that followed, the virus spread across Michigan, bringing deaths in the hundreds, confirmed cases in the thousands, and deep disruption to this state’s economy, homes, and educational, civic, social, and religious institutions. On April 1, 2020, in response to the widespread and severe health, economic, and social harms posed by the COVID-19 pandemic, I issued Executive Order 2020-33. This order expanded on Executive Order 2020-4 and declared both a state of emergency and a state of disaster across the State of Michigan under section 1 of article 5 of the Michigan Constitution of 1963, the Emergency Management Act, and the Emergency Powers of the Governor Act of 1945.

The Emergency Management Act vests the governor with broad powers and duties to “cope[e] with dangers to this state or the people of this state presented by a disaster or emergency,” which the governor may implement through “executive orders, proclamations, and directives having the force and effect of law.” MCL 30.403(1)-(2). Similarly, the Emergency Powers of the Governor Act of 1945 provides that, after declaring a state of emergency, “the governor may promulgate reasonable orders, rules, and regulations as he or she considers necessary to protect life and property or to bring the emergency situation within the affected area under control.” MCL 10.31(1).
To suppress the spread of COVID-19, to prevent the state’s health care system from being overwhelmed, to allow time for the production of critical test kits, ventilators, and personal protective equipment, and to avoid needless deaths, it is reasonable and necessary to direct residents to remain at home or in their place of residence to the maximum extent feasible. To that end, on March 23, 2020, I issued Executive Order 2020-21, ordering all people in Michigan to stay home and stay safe. The order limited gatherings and travel, and required workers who are not necessary to sustain or protect life to stay home.

The measures put in place by Executive Order 2020-21 have been effective, but this virus is both aggressive and persistent: on April 8, 2020, Michigan reported 20,346 confirmed cases of COVID-19 and 959 deaths from it. To win this fight, and to protect the health and safety of our state and each other, we must be just as aggressive and persistent. Though we have all made sacrifices, we must be steadfast. Accordingly, with this order, I find it reasonable and necessary to reaffirm the measures set forth in Executive Order 2020-21, clarify them, and extend their duration to April 30, 2020. This order takes effect on April 9, 2020 at 11:59 pm. When this order takes effect, Executive Order 2020-21 is rescinded.

Acting under the Michigan Constitution of 1963 and Michigan law, I order the following:

1. This order must be construed broadly to prohibit in-person work that is not necessary to sustain or protect life.

2. Subject to the exceptions in section 7 of this order, all individuals currently living within the State of Michigan are ordered to stay at home or at their place of residence. Subject to the same exceptions, all public and private gatherings of any number of people occurring among persons not part of a single household are prohibited.

3. All individuals who leave their home or place of residence must adhere to social distancing measures recommended by the Centers for Disease Control and Prevention (“CDC”), including remaining at least six feet from people from outside the individual’s household to the extent feasible under the circumstances.

4. No person or entity shall operate a business or conduct operations that require workers to leave their homes or places of residence except to the extent that those workers are necessary to sustain or protect life or to conduct minimum basic operations.

(a) For purposes of this order, workers who are necessary to sustain or protect life are defined as “critical infrastructure workers,” as described in sections 8 and 9 of this order.

(b) For purposes of this order, workers who are necessary to conduct minimum basic operations are those whose in-person presence is strictly necessary to allow the business or operation to maintain the value of inventory and equipment, care for animals, ensure security, process transactions (including payroll and employee benefits), or facilitate the ability of other workers to work remotely.
Businesses and operations must determine which of their workers are necessary to conduct minimum basic operations and inform such workers of that designation. Businesses and operations must make such designations in writing, whether by electronic message, public website, or other appropriate means. Workers need not carry copies of their designations when they leave the home or place of residence for work.

Any in-person work necessary to conduct minimum basic operations must be performed consistently with the social distancing practices and other mitigation measures described in section 10 of this order.

5. Businesses and operations that employ critical infrastructure workers may continue in-person operations, subject to the following conditions:

(a) Consistent with sections 8 and 9 of this order, businesses and operations must determine which of their workers are critical infrastructure workers and inform such workers of that designation. Businesses and operations must make such designations in writing, whether by electronic message, public website, or other appropriate means. Workers need not carry copies of their designations when they leave the home or place of residence for work. Businesses and operations need not designate:

(1) Workers in health care and public health.

(2) Workers who perform necessary government activities, as described in section 6 of this order.

(3) Workers and volunteers described in section 9(d) of this order.

(b) In-person activities that are not necessary to sustain or protect life must be suspended until normal operations resume.

(c) Businesses and operations maintaining in-person activities must adopt social distancing practices and other mitigation measures to protect workers and patrons, as described in section 10 of this order. Stores that are open to the public must also adhere to the rules described in section 11 of this order.

6. All in-person government activities at whatever level (state, county, or local) that are not necessary to sustain or protect life, or to support those businesses and operations that are necessary to sustain or protect life, are suspended.

(a) For purposes of this order, necessary government activities include activities performed by critical infrastructure workers, including workers in law enforcement, public safety, and first responders.

(b) Such activities also include, but are not limited to, public transit, trash pick-up and disposal (including recycling and composting), activities necessary to manage and oversee elections, operations necessary to enable transactions that support the work of a business's or operation's critical infrastructure.
workers, and the maintenance of safe and sanitary public parks so as to allow for outdoor activity permitted under this order.

(c) For purposes of this order, necessary government activities include minimum basic operations, as described in section 4(b) of this order. Workers performing such activities need not be designated.

(d) Any in-person government activities must be performed consistently with the social distancing practices and other mitigation measures to protect workers and patrons described in section 10 of this order.

7. Exceptions.

(a) Individuals may leave their home or place of residence, and travel as necessary:

(1) To engage in outdoor physical activity, consistent with remaining at least six feet from people from outside the individual's household. Outdoor physical activity includes walking, hiking, running, cycling, kayaking, canoeing, or other similar physical activity, as well as any comparable activity for those with limited mobility.

(2) To perform their jobs as critical infrastructure workers after being so designated by their employers. (Critical infrastructure workers who need not be designated under section 5(a) of this order may leave their home for work without being designated.)

(3) To conduct minimum basic operations, as described in section 4(b) of this order, after being designated to perform such work by their employers.

(4) To perform necessary government activities, as described in section 6 of this order.

(5) To perform tasks that are necessary to their health and safety, or to the health and safety of their family or household members (including pets). Individuals may, for example, leave the home or place of residence to secure medication or to seek medical or dental care that is necessary to address a medical emergency or to preserve the health and safety of a household or family member (including procedures that, in accordance with a duly implemented nonessential procedures postponement plan, have not been postponed).

(6) To obtain necessary services or supplies for themselves, their family or household members, their pets, and their vehicles.

(A) Individuals must secure such services or supplies via delivery to the maximum extent possible. As needed, however, individuals may leave the home or place of residence to
purchase groceries, take-out food, gasoline, needed medical supplies, and any other products necessary to maintain the safety, sanitation, and basic operation of their residences. Individuals may also leave the home to drop off a vehicle to the extent permitted under section 9(1) of this order.

(B) Individuals should limit, to the maximum extent that is safe and feasible, the number of household members who leave the home for any errands.

(7) To care for a family member or a family member’s pet in another household.

(8) To care for minors, dependents, the elderly, persons with disabilities, or other vulnerable persons.

(9) To visit an individual under the care of a health care facility, residential care facility, or congregate care facility, to the extent otherwise permitted.

(10) To attend legal proceedings or hearings for essential or emergency purposes as ordered by a court.

(11) To work or volunteer for businesses or operations (including both religious and secular nonprofit organizations) that provide food, shelter, and other necessities of life for economically disadvantaged or otherwise needy individuals, individuals who need assistance as a result of this emergency, and people with disabilities.

(12) To attend a funeral, provided that no more than 10 people are in attendance at the funeral.

(b) Individuals may also travel:

(1) To return to a home or place of residence from outside this state.

(2) To leave this state for a home or residence elsewhere.

(3) Between two residences in this state, through April 10, 2020. After that date, travel between two residences is not permitted.

(4) As required by law enforcement or a court order, including the transportation of children pursuant to a custody agreement.

(c) All other travel is prohibited, including all travel to vacation rentals.

8. For purposes of this order, critical infrastructure workers are those workers described by the Director of the U.S. Cybersecurity and Infrastructure Security Agency in his guidance of March 19, 2020 on the COVID-19 response (available
here). This order does not adopt any subsequent guidance document released by this same agency.

Consistent with the March 19, 2020 guidance document, critical infrastructure workers include some workers in each of the following sectors:

(a) Health care and public health.
(b) Law enforcement, public safety, and first responders.
(c) Food and agriculture.
(d) Energy.
(e) Water and wastewater.
(f) Transportation and logistics.
(g) Public works.
(h) Communications and information technology, including news media.
(i) Other community-based government operations and essential functions.
(j) Critical manufacturing.
(k) Hazardous materials.
(l) Financial services.
(m) Chemical supply chains and safety.
(n) Defense industrial base.

9. For purposes of this order, critical infrastructure workers also include:

(a) Child care workers (including workers at disaster relief child care centers), but only to the extent necessary to serve the children or dependents of workers required to perform in-person work as permitted under this order. This category includes individuals (whether licensed or not) who have arranged to care for the children or dependents of such workers.

(b) Workers at suppliers, distribution centers, or service providers, as described below.

(1) Any suppliers, distribution centers, or service providers whose continued operation is necessary to enable, support, or facilitate another business’s or operation’s critical infrastructure work may designate their workers as critical infrastructure workers, provided
that only those workers whose in-person presence is necessary to enable, support, or facilitate such work may be so designated.

(2) Any suppliers, distribution centers, or service providers whose continued operation is necessary to enable, support, or facilitate the necessary work of suppliers, distribution centers, or service providers described in subprovision (1) of this subsection may designate their workers as critical infrastructure workers, provided that only those workers whose in-person presence is necessary to enable, support, or facilitate such work may be so designated.

(3) Consistent with the scope of work permitted under subprovision (2) of this subsection, any suppliers, distribution centers, or service providers further down the supply chain whose continued operation is necessary to enable, support, or facilitate the necessary work of other suppliers, distribution centers, or service providers may likewise designate their workers as critical infrastructure workers, provided that only those workers whose in-person presence is necessary to enable, support, or facilitate such work may be so designated.

(4) Suppliers, distribution centers, and service providers that abuse their designation authority under this subsection shall be subject to sanctions to the fullest extent of the law.

(c) Workers in the insurance industry, but only to the extent that their work cannot be done by telephone or remotely.

(d) Workers and volunteers for businesses or operations (including both religious and secular nonprofit organizations) that provide food, shelter, and other necessities of life for economically disadvantaged or otherwise needy individuals, individuals who need assistance as a result of this emergency, and people with disabilities.

(e) Workers who perform critical labor union functions, including those who administer health and welfare funds and those who monitor the well-being and safety of union members who are critical infrastructure workers, provided that any administration or monitoring should be done by telephone or remotely where possible.

(f) Workers at retail stores who sell groceries, medical supplies, and products necessary to maintain the safety, sanitation, and basic operation of residences, including convenience stores, pet supply stores, auto supplies and repair stores, hardware and home maintenance stores, and home appliance retailers.

(g) Workers at laundromats, coin laundries, and dry cleaners.
(h) Workers at hotels and motels, provided that the hotels or motels do not offer additional in-house amenities such as gyms, pools, spas, dining, entertainment facilities, meeting rooms, or like facilities.

(i) Workers at motor vehicle dealerships who are necessary to facilitate remote and electronic sales or leases, or to deliver motor vehicles to customers, provided that showrooms remain closed to in-person traffic.

10. Businesses, operations, and government agencies that continue in-person work must adhere to sound social distancing practices and measures, which include but are not limited to:

(a) Developing a COVID-19 preparedness and response plan, consistent with recommendations in Guidance on Preparing Workplaces for COVID-19, developed by the Occupational Health and Safety Administration and available here. Such plan must be available at company headquarters or the worksite.

(b) Restricting the number of workers present on premises to no more than is strictly necessary to perform the business’s, operation’s, or government agency’s critical infrastructure functions or its minimum basic operations.

(c) Promoting remote work to the fullest extent possible.

(d) Keeping workers and patrons who are on premises at least six feet from one another to the maximum extent possible.

(e) Increasing standards of facility cleaning and disinfection to limit worker and patron exposure to COVID-19, as well as adopting protocols to clean and disinfect in the event of a positive COVID-19 case in the workplace.

(f) Adopting policies to prevent workers from entering the premises if they display respiratory symptoms or have had contact with a person with a confirmed diagnosis of COVID-19.

(g) Any other social distancing practices and mitigation measures recommended by the CDC.

11. Any store that remains open for in-person sales under section 5 or 9(f) of this order must:

(a) Establish lines to regulate entry in accordance with subsections (c) and (d) of this section, with markings for patrons to enable them to stand at least six feet apart from one another while waiting. Stores should also explore alternatives to lines, including by allowing customers to wait in their cars for a text message or phone call, to enable social distancing and to accommodate seniors and those with disabilities.
(b) Consider establishing curbside pick-up to reduce in-store traffic and mitigate outdoor lines.

(c) For stores of less than 50,000 square feet of customer floor space, limit the number of people in the store (including employees) to 25% of the total occupancy limits established by the State Fire Marshal or a local fire marshal.

(d) For stores of more than 50,000 square feet:

(1) Limit the number of customers in the store at one time (excluding employees) to 4 people per 1,000 square feet of customer floor space. The amount of customer floor space must be calculated to exclude store areas that are closed under subprovision (2) of this subsection.

(2) Close areas of the store—by cordoning them off, placing signs in aisles, posting prominent signs, removing goods from shelves, or other appropriate means—that are dedicated to the following classes of goods:

(A) Carpet or flooring.

(B) Furniture.

(C) Garden centers and plant nurseries.

(D) Paint.

(3) By April 13, 2020, refrain from the advertising or promotion of goods that are not groceries, medical supplies, or items that are necessary to maintain the safety, sanitation, and basic operation of residences.

(4) Create at least two hours per week of dedicated shopping time for vulnerable populations, which for purposes of this order are people over 60, pregnant women, and those with chronic conditions like heart disease, diabetes, and lung disease.

(e) The director of the Department of Health and Human Services is authorized to issue an emergency order varying the capacity limits described in subsections (c) and (d) of this section as necessary to protect the public health.

12. No one shall advertise or rent a short-term vacation property except as necessary to assist in housing a health care professional or volunteer aiding in the response to the COVID-19 crisis.

13. Nothing in this order should be taken to supersede another executive order or directive that is in effect, except to the extent this order imposes more stringent limitations on in-person work, activities, and interactions. Consistent with prior
guidance, a place of religious worship, when used for religious worship, is not subject
to penalty under section 17 of this order.

14. 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.

15. This order takes effect on April 9, 2020 at 11:59 pm and continues through April 30,
2020 at 11:59 pm. When this order takes effect, Executive Order 2020-21 is
rescinded. All references to that order in other executive orders, agency rules, letters
of understanding, or other legal authorities shall be taken to refer to this order.

16. I will evaluate the continuing need for this order prior to its expiration. In
determining whether to maintain, intensify, or relax its restrictions, I will consider,
among other things, (1) data on COVID-19 infections and the disease’s rate of
spread; (2) whether sufficient medical personnel, hospital beds, and ventilators exist
to meet anticipated medical need; (3) the availability of personal protective
equipment for the health-care workforce; (4) the state’s capacity to test for COVID-
19 cases and isolate infected people; and (5) economic conditions in the state.

17. Consistent with MCL 10.33 and MCL 30.405(3), a willful violation of this order is a
misdemeanor.

Given under my hand and the Great Seal of the State of Michigan.

Date: April 9, 2020
Time: 2:07 pm

GRETCHEN WHITMER
GOVERNOR

By the Governor:

SECRETARY OF STATE
Ms. Malerman:

Please see the attached correspondence in regards to the Clarity Hearing scheduled for 10:00 a.m. on April 29, 2020. If you have any questions, please contact me at the number below.

Regards,

Chris

Christopher M. Trebilcock

CLARK HILL PLC

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Via email: malermanm@michigan.gov

April 28, 2020

Melissa Malerman
Director of the Disclosure, Filings and Compliance Division
Michigan Secretary of State, Bureau of Elections
430 West Allegan, First Floor
Lansing, Michigan 48918

Dear Director Malerman:

On behalf of Governor Whitmer, I am in receipt of your April 17, 2020 notice of the recall petition submitted by Chad Baase (the “Petition”) directed to the Honorable Governor Gretchen E. Whitmer. As you know, MCL 168.951a(4) provides that “[i]n the board of state canvassers, not later than 3 business days after receipt of a petition for the recall of an officer as provided under subsection (2) …” Section 4, therefore, requires the Board of State Canvassers, not an employee of the Secretary of State, to notify a public officer whose recall is sought of each reason stated in the recall petition within three (3) days of receipt. I am not aware of any action by the Board of State Canvassers authorizing this notice or of any delegation of its duty as a body to notify Governor Whitmer. Strict compliance with due process under the Michigan Election Law is typically required. Bingo Coalition for Charity–Not Politics v. Bd. of State Canvassers, 215 Mich.App. 405, 546 N.W.2d 637 (1996)(requiring strict compliance with constitutionally required procedures). As a result, I believe the Clarity Hearing scheduled for April 29, 2020 is procedurally defective and should be rescheduled to occur on or before May 7, 2020 in compliance with MCL 168.951a(1)(3) and with the proper notice as set forth above.

I appreciate your attention to this matter. Should you have any questions or if you can provide any additional information regarding the above that changes the analysis above, please contact me at your earliest convenience.

Sincerely,

Clark Hill, PLC

Christopher M. Trebilcock

cc: Jonathan Brater, Director of Elections and Secretary to the Board of State Canvassers
    The Honorable Gretchen E. Whitmer, Governor
elections@michigan.gov
Ms. Malerman:

On behalf of the Honorable Governor Gretchen Whitmer, please see the attached objections to the recall petition submitted by Mr. Baase on April 17, 2020. I will be joined at the hearing tomorrow by Gary Gordon, with the Dykema law firm. My cell number is below. Gary’s phone number from which he will be calling tomorrow is 517.331.5815.

Thank you for your attention to these matters. If you have any questions or need any additional information, please let me know.

Regards,

Chris

Christopher M. Trebilcock

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April 28, 2020

Via email: malermanm@michigan.gov

Board of State Canvassers
Attn: Michigan Bureau of Elections
Michigan Department of State
Richard H. Austin Building
430 West Allegan Street, 1st Floor
Lansing, Michigan 48918

Re: Rejection of Petition Seeking Recall of Governor

Dear Board Members:

On behalf of Governor Whitmer and the Gretchen Whitmer for Governor candidate committee, I request that the Board of State Canvassers (the “Board”) reject as non-compliant with the Michigan Election Law the proposed petition seeking to recall Gretchen Whitmer from the office of governor submitted by Chad Baase on April 17, 2020 (the “Petition”). I am in receipt of a notice from the Director of the Disclosure, Filings and Compliance Division of the Bureau of Elections dated April 17, 2020 (the “Notice”) notifying the Governor of the Petition. The Notice indicates that the reasons for recall stated in the heading of the Petition read as follows:

Executive Order 2020-42 defines who is an essential employee and who is not, defines what business must close, prohibits the sale of items including plants and seeds sold at nurseries, prohibiting public and private gatherings of any number of persons not part of a single household, which includes but is not limited to religious services. Consistent with MCL 10.33 and MCL 30.405(3), a willful violation of the order is a misdemeanor.

1 See the attached letter (Exhibit 1) addressed to Melissa Malerman, Director of the Disclosure, Filings, and Compliance Division of the Bureau of Elections indicating that the notice of the recall petition did not comply with MCL 168.951a(4). Section 4 requires the Board of State Canvassers, not an employee of the Secretary of State, to notify a public officer whose recall is sought of each reason stated in the recall petition within three (3) days of receipt. Strict compliance with due process under the Michigan Election Law is mandatory. Bingo Coalition for Charity—Not Politics v. Bd. of State Canvassers, 215 Mich.App. 405, 546 N.W.2d 637 (1996)(strict compliance with constitutionally required procedures is required).
As you know, MCL 168.951a(1)(c)
2 requires the Petition to state factually and clearly each reason for a proposed recall. Each reason must also be based upon the officer’s conduct during his or her current term of office. The Petition states five distinct reasons for recall:

1. Executive Order 2020-42 defines who is an essential employee and who is not.
2. Executive Order 2020-42 defines what business must close.
3. Executive Order 2020-42 prohibits the sale of items including plants and seeds sold at nurseries.
4. Executive Order 2020-42 prohibiting [sic] public and private gatherings of any number of persons not part of a single household, which includes but is not limited to religious services.
5. Consistent with MCL 10.33 and MCL 30.405(3), a willful violation of the order is a “misdemeanor” [sic].

Under MCL 168.951a(3), the Board must determine by an affirmative vote of three of the members serving on the Board whether each reason for the recall stated in the Petition is factual and of sufficient clarity to enable the officer whose recall is sought and the electors to identify the course of conduct that is the basis of the recall. If any reason for the recall is not factual or of sufficient clarity, the entire recall petition must be rejected. Moreover, when the reason stated in the petition is based on a specific law, the reason for the recall must not misrepresent the content of the specific law.

For the reasons detailed more fully below, the Board is obligated by MCL 168.951a to reject the Petition because it does not identify a course of conduct that is the basis for the recall, none of the reasons stated in the Petition are factual and of sufficient clarity, and the reasons in the Petition misrepresent the content of Executive Order 2020-42 (the “Order”).

Objection No. 1: The Petition Does Not Specify A Course Of Conduct as Required

MCL 168.951a requires that a recall petition include clear and factual statements sufficient for the officer whose recall is sought and the electors “to identify the course of conduct that is the basis for the recall.” Moreover, the identified conduct must have occurred in the officer’s current term of office. In this case, the Petition does not identify any action, conduct, or course of conduct by the Governor, nor does the Petition identify when the conduct occurred.

While the Petition references “Executive Order 2020-42,” this phrase alone is insufficient to advise the electors of the course of conduct that serves as the basis of the recall or when that course of conduct occurred. Governor Whitmer is not mentioned in the reasons for recall nor is a date or dates of a course of conduct referenced. No connection between Executive Order 2020-42
3 and the conduct of the Governor is stated in the Petition. The Petition is, therefore,

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2 A copy of MCL 168.951a is attached as Exhibit 2.
3 A copy of Executive Order 2020-42, which has since been rescinded by Executive Order 2020-59, is attached as Exhibit 3.
insufficiently clear, non-compliant with the requirements of the MCL 168.951a, and must be rejected by the Board.

**Objection No. 2: First Stated Reason for Recall is Not Factual or of Sufficient Clarity**

The Petition states that Executive Order 2020-42 "defines who is an essential employee and who is not." This stated reason for recall is not factual and is not sufficiently clear. The phrase "essential employee" did not appear in Executive Order 2020-42. A phrase not used cannot be defined. Instead, Executive Order 2020-42 stated that "for purposes of this order, workers who are necessary to sustain or protect life are defined as ‘critical infrastructure workers,’ as described in sections 8 and 9 of this order." (emphasis added).

The Order further provided that critical infrastructure workers were also those workers identified in the March 19, 2020 guidance issued by the Director of the U.S. Cybersecurity and Infrastructure Security Agency ("CISA"). The Order identified critical infrastructure workers but never indicated that particular employees were essential or not. In addition, use of the phrase "workers" in the order was broad enough to include independent contractors, in addition to the employees referenced in the Petition. Michigan law has long-recognized a difference between employees and independent contractors. The use of a term that is inconsistent with the language in the Order will lead to elector confusion. Accordingly, the first stated reason for recall is not factual or of sufficient clarity and the entire Petition must be rejected.

**Objection No. 3: Second Stated Reason for Recall is Not Factual or of Sufficient Clarity**

The Petition states that Executive Order 2020-42 "defines what business must close." This stated reason for recall is not factual and is not sufficiently clear. The term "close" is vague and ambiguous. The term "close" can mean many different things. The online Merriam-Webster dictionary includes six (6) separate entries for the term, with at over twenty different meanings. ([https://www.merriam-webster.com/dictionary?visited April 28, 2020](https://www.merriam-webster.com/dictionary?visited April 28, 2020)). The term could reference closing the doors and not allowing customers into a facility, while still operating. The term could reference suspending operations for a period of time. The term could mean ceasing operations permanently and discontinuing operations as an ongoing concern. As such, the phrase "defines what businesses must close" is not clear and could be misinterpreted by electors.

Moreover, under the Order, no business was required to close. Section 4 of Executive Order 2020-42 actually states:

No person or entity shall operate a business or conduct operations that require workers to leave their homes or places of residence except to the extent that those workers are necessary to sustain or protect life or to conduct minimum basic operations.

Rather than defining what businesses were required to close, Executive Order 2020-42 instead imposed restrictions on persons or entities operating a business. The Order did not require any business to close or cease all operations. Instead, the Order permitted businesses necessary to
sustain or protect life to continue operations and permitted all businesses to continue to conduct minimum basic operations. As such, Executive Order 2020-42 did not define or require any Michigan business to “close” as stated in the Petition. Accordingly, the second stated reason for recall is not factual or of sufficient clarity and the entire Petition must be rejected.

**Objection No. 4: Third Stated Reason for Recall is Not Factual or of Sufficient Clarity**

The Petition states that Executive Order 2020-42 “prohibits the sale of items including plants and seeds sold at nurseries.” As a threshold issue, the term “items” is vague and unclear. Items can mean many different things and the Petition fails to specify “items,” except for two products not mentioned in Executive Order 2020-42. What is more, the items “plants and seeds” described in the Petition, were not actually referenced in Executive Order 2020-42.

Moreover, the Order did not prohibit the sale of all items at all nurseries. Executive Order 2020-42 did require a store of greater than 50,000 square feet that remained open for in-person sales to close areas of the store dedicated to “garden centers and plant nurseries” (along with areas containing certain other specified goods). However, the requirement did not apply to stores of 50,000 square feet or less. The Order did not prevent a store, including those greater than 50,000 square feet, from selling plants or seeds in other areas of the store. The Order also did not restrict on-line sales or other sales that were not in-person sales. The Petition does not explain these distinctions, thus misrepresenting the contents of Executive Order 2020-42. Accordingly, the third stated reason for recall is not factual or of sufficient clarity and the entire Petition must be rejected.

**Objection No. 5: Fourth Stated Reason for Recall is Not Factual or of Sufficient Clarity**

The Petition states that Executive Order 2020-42 “prohibiting [sic] public and private gatherings of any number of persons not part of a single household, which includes but is not limited to religious services.” This stated reason for recall is not factual and is not sufficiently clear. The actual language of Executive Order 2020-42 prefaced the language quoted in the Petition by noting that the suspension of public gathering was “subject to the exceptions in section 7 of this order.” Section 7 of Executive Order 2020-42 listed at least 12 exceptions to the suspension of public and private gatherings. The exceptions included attendance at funerals (which often are religious services). Additionally, the restrictions on public or private gatherings under Executive Order 2020-42 did not prohibit persons from gathering in any number:

To work or volunteer for businesses or operations (including both religious and secular nonprofit organizations) that provide food, shelter, and other necessities of life for economically disadvantaged or otherwise needy individuals, individuals who need assistance as a result of this emergency, and people with disabilities.

*See section 7(a)(11) of Executive Order 2020-42. The Order also never specifically referenced any restrictions or prohibitions relating to religious services. Additionally, Section 13 of Executive Order 2020-42 indicated that “[c]onsistent with prior guidance, a place of religious worship, when used for religious worship, is not subject to penalty under Section 17 of this order.”*
The Petition, therefore, misrepresents the content of Executive Order 2020-42 because it does not reference the exceptions included in the order and fails to inform Michigan electors that individuals may could attend legal proceedings without limitation on the number of attendees, funerals with 10 or fewer attendees, or work or volunteer for activities related to providing food and shelter to needy individuals without regard to the number of individuals gathered for that purpose. Failing to acknowledge these exceptions misrepresents the actual content and effect of Executive Order 2020-42. Accordingly, the fourth stated reason for recall is not factual or of sufficient clarity and the entire Petition must be rejected.

**Objection No. 6: Fifth Stated Reason for Recall is Not Factual or of Sufficient Clarity**

The fifth stated reason for recall included in the Petition includes the statement that “a willful violation of the order is a *misdemeanor.*” (emphasis added). The term “misdemeanor” does not appear in any available English Dictionary. (see, for example, [https://www.merriam-webster.com/dictionary/](https://www.merriam-webster.com/dictionary/) [visited April 28, 2020] (indicating that the word “misdemeanor” does not appear in the dictionary)). This statement is not factual because Executive Order 2020-42 did not use the term “misdemeanor”. It also is not sufficiently clear because the use of unknown term likely would confuse or mislead electors unfamiliar with the term. Accordingly, the fifth stated reason for recall is not factual or of sufficient clarity and the entire Petition must be rejected.

In sum, there are at least six (6) independent and compelling reasons why the reasons state for recall in the Petition fail to satisfy the requirements of the Michigan Election Law. This requires the Board to reject the Petition in its entirety. I plan to appear at the clarity hearing on April 29, 2020 at 10:00 a.m. and look forward to addressing the Board. Thank you in advance for your attention to this matter.

Sincerely,

Clark Hill, PLC

[Signature]

Christopher M. Trebilcock

CC: Melissa Malerman, Director  
Jonathan Brater, Director of Elections and Secretary to the Board of State Canvassers  
The Honorable Gretchen E. Whitmer, Governor  
elections@michigan.gov  
Gary Gordon, Dykema
April 28, 2020

Via email: malermanm@michigan.gov

Melissa Malerman
Director of the Disclosure, Filings and Compliance Division
Michigan Secretary of State, Bureau of Elections
430 West Allegan, First Floor
Lansing, Michigan 48918

Dear Director Malerman:

On behalf of Governor Whitmer, I am in receipt of your April 17, 2020 notice of the recall petition submitted by Chad Baase (the “Petition”) directed to the Honorable Governor Gretchen E. Whitmer. As you know, MCL 168.951a(4) provides that “[t]he board of state canvassers, not later than 3 business days after receipt of a petition for the recall of an officer as provided under subsection (2) …” Section 4, therefore, requires the Board of State Canvassers, not an employee of the Secretary of State, to notify a public officer whose recall is sought of each reason stated in the recall petition within three (3) days of receipt. I am not aware of any action by the Board of State Canvassers authorizing this notice or of any delegation of its duty as a body to notify Governor Whitmer. Strict compliance with due process under the Michigan Election Law is typically required. Bing Coalitio for Charity–Not Politics v. Bd. of State Canvassers, 215 Mich.App. 405, 546 N.W.2d 637 (1996)(requiring strict compliance with constitutionally required procedures). As a result, I believe the Clarity Hearing scheduled for April 29, 2020 is procedurally defective and should be cancelled.

I appreciate your attention to this matter. Should you have any questions or if you can provide any additional information regarding the above that changes the analysis above, please contact me at your earliest convenience.

Sincerely,

Clark Hill, PLC

Christopher M. Trebilcock

cc: Jonathan Brater, Director of Elections and Secretary to the Board of State Canvassers
    The Honorable Gretchen E. Whitmer, Governor
    elections@michigan.gov
168.951a Recall petition under MCL 168.959; requirements; submission to board of state canvassers; determination that reason for recall is factual and of sufficient clarity; notice; meeting; presentation of arguments; appeal; validity of petition.

Sec. 951a. (1) A petition for the recall of an officer listed in section 959 must meet all of the following requirements:
(a) Comply with section 544c(1) and (2).
(b) Be printed.
(c) State factually and clearly each reason for the recall. Each reason for the recall must be based upon the officer's conduct during his or her current term of office. The reason for the recall may be typewritten. If any reason for the recall is based on the officer's conduct in connection with specific legislation, the reason for the recall must not misrepresent the content of the specific legislation.
(d) Contain a certificate of the circulator. The certificate of the circulator may be printed on the reverse side of the petition.
(e) Be in a form prescribed by the secretary of state.
(2) Before being circulated, a petition for the recall of an officer under subsection (1) must be submitted to the board of state canvassers.
(3) The board of state canvassers, not less than 10 days or more than 20 days after submission to it of a petition for the recall of an officer under subsection (1), shall meet and shall determine by an affirmative vote of 3 of the members serving on the board of state canvassers whether each reason for the recall stated in the petition is factual and of sufficient clarity to enable the officer whose recall is sought and the electors to identify the course of conduct that is the basis for the recall. If any reason for the recall is not factual or of sufficient clarity, the entire recall petition must be rejected. Failure of the board of state canvassers to meet as required by this subsection constitutes a determination that each reason for the recall stated in the petition is factual and of sufficient clarity to enable the officer whose recall is being sought and the electors to identify the course of conduct that is the basis for the recall.
(4) The board of state canvassers, not later than 5 business days after receipt of a petition for the recall of an officer as provided under subsection (2), shall notify the officer whose recall is sought of each reason stated in the recall petition and of the date of the meeting of the board of state canvassers to consider whether each reason is factual and of sufficient clarity.
(5) The officer whose recall is sought and the sponsors of the recall petition may appear at the meeting and present arguments on whether each reason is factual and of sufficient clarity.
(6) The determination by the board of state canvassers may be appealed by the officer whose recall is sought or by the sponsors of the recall petition drive to the court of appeals. The appeal must be filed not more than 10 days after the determination of the board of state canvassers. If a determination of the board of state canvassers is appealed to the court of appeals, the recall petition is not valid for circulation and must not be circulated until a determination of whether each reason is factual and of sufficient clarity is made by the court of appeals or until 40 days after the date of the appeal, whichever is sooner.
(7) A petition is not valid for circulation if at any time the court of appeals determines that each reason on the recall petition is not factual and of sufficient clarity.
(8) A recall petition is valid for 180 days after either of the following, whichever occurs later:
(a) The date of determination of whether each reason is factual and of sufficient clarity by the board of state canvassers.
(b) The sooner of the following:
(i) The date of determination of whether each reason is factual and of sufficient clarity by the court of appeals.
(ii) Subject to subsection (7), 40 days after the date of the appeal under subsection (6).
(9) A recall petition that is filed after the 180-day period described in subsection (8) is not valid and must not be accepted by the filing official under section 961. This subsection does not prohibit a person from resubmitting a recall petition for a determination of sufficient clarity and factualityness under this section.


Compiler's note: Enacting section 2 of Act 417 of 2012 provides:
*Enacting section 2. As provided in section 5 of 1846 RS 1, MCL 8.5, this act is severable.*
Enacting section 3 of Act 417 of 2012 provides:
*Enacting section 3. The legislature recognizes the importance of the electoral process, and it is the intent of the legislature that this amendatory act uphold each of the following:
(a) Section 4 of article II of the state constitution of 1963.
(b) Section 8 of article II of the state constitution of 1963.
(c) Section 26 of article V of the state constitution of 1963.

Popular name: Election Code
EXECUTIVE ORDER

No. 2020-42

Temporary requirement to suspend activities that are not necessary to sustain or protect life

Reissuance of Executive Order 2020-21

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 or antiviral treatment for this disease.

On March 10, 2020, the Michigan Department of Health and Human Services identified the first two presumptive-positive cases of COVID-19 in Michigan. On that same day, I issued Executive Order 2020-4. This order declared a state of emergency across the state of Michigan under section 1 of article 5 of the Michigan Constitution of 1963, the Emergency Management Act, 1976 PA 390, as amended, MCL 30.401 et seq., and the Emergency Powers of the Governor Act of 1945, 1945 PA 302, as amended, MCL 10.31 et seq.

In the three weeks that followed, the virus spread across Michigan, bringing deaths in the hundreds, confirmed cases in the thousands, and deep disruption to this state’s economy, homes, and educational, civic, social, and religious institutions. On April 1, 2020, in response to the widespread and severe health, economic, and social harms posed by the COVID-19 pandemic, I issued Executive Order 2020-33. This order expanded on Executive Order 2020-4 and declared both a state of emergency and a state of disaster across the State of Michigan under section 1 of article 5 of the Michigan Constitution of 1963, the Emergency Management Act, and the Emergency Powers of the Governor Act of 1945.

The Emergency Management Act vests the governor with broad powers and duties to “cope[ with dangers to this state or the people of this state presented by a disaster or emergency,” which the governor may implement through “executive orders, proclamations, and directives having the force and effect of law.” MCL 30.403(1)-(2). Similarly, the Emergency Powers of the Governor Act of 1945 provides that, after declaring a state of emergency, “the governor may promulgate reasonable orders, rules, and regulations as he or she considers necessary to protect life and property or to bring the emergency situation within the affected area under control.” MCL 10.31(1).
To suppress the spread of COVID-19, to prevent the state’s health care system from being overwhelmed, to allow time for the production of critical test kits, ventilators, and personal protective equipment, and to avoid needless deaths, it is reasonable and necessary to direct residents to remain at home or in their place of residence to the maximum extent feasible. To that end, on March 23, 2020, I issued Executive Order 2020-21, ordering all people in Michigan to stay home and stay safe. The order limited gatherings and travel, and required workers who are not necessary to sustain or protect life to stay home.

The measures put in place by Executive Order 2020-21 have been effective, but this virus is both aggressive and persistent: on April 8, 2020, Michigan reported 20,346 confirmed cases of COVID-19 and 959 deaths from it. To win this fight, and to protect the health and safety of our state and each other, we must be just as aggressive and persistent. Though we have all made sacrifices, we must be steadfast. Accordingly, with this order, I find it reasonable and necessary to reaffirm the measures set forth in Executive Order 2020-21, clarify them, and extend their duration to April 30, 2020. This order takes effect on April 9, 2020 at 11:59 pm. When this order takes effect, Executive Order 2020-21 is rescinded.

Acting under the Michigan Constitution of 1963 and Michigan law, I order the following:

1. This order must be construed broadly to prohibit in-person work that is not necessary to sustain or protect life.

2. Subject to the exceptions in section 7 of this order, all individuals currently living within the State of Michigan are ordered to stay at home or at their place of residence. Subject to the same exceptions, all public and private gatherings of any number of people occurring among persons not part of a single household are prohibited.

3. All individuals who leave their home or place of residence must adhere to social distancing measures recommended by the Centers for Disease Control and Prevention ("CDC"), including remaining at least six feet from people from outside the individual’s household to the extent feasible under the circumstances.

4. No person or entity shall operate a business or conduct operations that require workers to leave their homes or places of residence except to the extent that those workers are necessary to sustain or protect life or to conduct minimum basic operations.

   (a) For purposes of this order, workers who are necessary to sustain or protect life are defined as “critical infrastructure workers,” as described in sections 8 and 9 of this order.

   (b) For purposes of this order, workers who are necessary to conduct minimum basic operations are those whose in-person presence is strictly necessary to allow the business or operation to maintain the value of inventory and equipment, care for animals, ensure security, process transactions (including payroll and employee benefits), or facilitate the ability of other workers to work remotely.
Businesses and operations must determine which of their workers are necessary to conduct minimum basic operations and inform such workers of that designation. Businesses and operations must make such designations in writing, whether by electronic message, public website, or other appropriate means. Workers need not carry copies of their designations when they leave the home or place of residence for work.

Any in-person work necessary to conduct minimum basic operations must be performed consistently with the social distancing practices and other mitigation measures described in section 10 of this order.

5. Businesses and operations that employ critical infrastructure workers may continue in-person operations, subject to the following conditions:

(a) Consistent with sections 8 and 9 of this order, businesses and operations must determine which of their workers are critical infrastructure workers and inform such workers of that designation. Businesses and operations must make such designations in writing, whether by electronic message, public website, or other appropriate means. Workers need not carry copies of their designations when they leave the home or place of residence for work. Businesses and operations need not designate:

(1) Workers in health care and public health.

(2) Workers who perform necessary government activities, as described in section 6 of this order.

(3) Workers and volunteers described in section 9(d) of this order.

(b) In-person activities that are not necessary to sustain or protect life must be suspended until normal operations resume.

(c) Businesses and operations maintaining in-person activities must adopt social distancing practices and other mitigation measures to protect workers and patrons, as described in section 10 of this order. Stores that are open to the public must also adhere to the rules described in section 11 of this order.

6. All in-person government activities at whatever level (state, county, or local) that are not necessary to sustain or protect life, or to support those businesses and operations that are necessary to sustain or protect life, are suspended.

(a) For purposes of this order, necessary government activities include activities performed by critical infrastructure workers, including workers in law enforcement, public safety, and first responders.

(b) Such activities also include, but are not limited to, public transit, trash pick-up and disposal (including recycling and composting), activities necessary to manage and oversee elections, operations necessary to enable transactions that support the work of a business’s or operation’s critical infrastructure
workers, and the maintenance of safe and sanitary public parks so as to allow for outdoor activity permitted under this order.

(c) For purposes of this order, necessary government activities include minimum basic operations, as described in section 4(b) of this order. Workers performing such activities need not be designated.

(d) Any in-person government activities must be performed consistently with the social distancing practices and other mitigation measures to protect workers and patrons described in section 10 of this order.

7. Exceptions.

(a) Individuals may leave their home or place of residence, and travel as necessary:

(1) To engage in outdoor physical activity, consistent with remaining at least six feet from people from outside the individual’s household. Outdoor physical activity includes walking, hiking, running, cycling, kayaking, canoeing, or other similar physical activity, as well as any comparable activity for those with limited mobility.

(2) To perform their jobs as critical infrastructure workers after being so designated by their employers. (Critical infrastructure workers who need not be designated under section 5(a) of this order may leave their home for work without being designated.)

(3) To conduct minimum basic operations, as described in section 4(b) of this order, after being designated to perform such work by their employers.

(4) To perform necessary government activities, as described in section 6 of this order.

(5) To perform tasks that are necessary to their health and safety, or to the health and safety of their family or household members (including pets). Individuals may, for example, leave the home or place of residence to secure medication or to seek medical or dental care that is necessary to address a medical emergency or to preserve the health and safety of a household or family member (including procedures that, in accordance with a duly implemented nonessential procedures postponement plan, have not been postponed).

(6) To obtain necessary services or supplies for themselves, their family or household members, their pets, and their vehicles.

(A) Individuals must secure such services or supplies via delivery to the maximum extent possible. As needed, however, individuals may leave the home or place of residence to
purchase groceries, take-out food, gasoline, needed medical supplies, and any other products necessary to maintain the safety, sanitation, and basic operation of their residences. Individuals may also leave the home to drop off a vehicle to the extent permitted under section 9(i) of this order.

(B) Individuals should limit, to the maximum extent that is safe and feasible, the number of household members who leave the home for any errands.

(7) To care for a family member or a family member’s pet in another household.

(8) To care for minors, dependents, the elderly, persons with disabilities, or other vulnerable persons.

(9) To visit an individual under the care of a health care facility, residential care facility, or congregate care facility, to the extent otherwise permitted.

(10) To attend legal proceedings or hearings for essential or emergency purposes as ordered by a court.

(11) To work or volunteer for businesses or operations (including both religious and secular nonprofit organizations) that provide food, shelter, and other necessities of life for economically disadvantaged or otherwise needy individuals, individuals who need assistance as a result of this emergency, and people with disabilities.

(12) To attend a funeral, provided that no more than 10 people are in attendance at the funeral.

(b) Individuals may also travel:

(1) To return to a home or place of residence from outside this state.

(2) To leave this state for a home or residence elsewhere.

(3) Between two residences in this state, through April 10, 2020. After that date, travel between two residences is not permitted.

(4) As required by law enforcement or a court order, including the transportation of children pursuant to a custody agreement.

(c) All other travel is prohibited, including all travel to vacation rentals.

8. For purposes of this order, critical infrastructure workers are those workers described by the Director of the U.S. Cybersecurity and Infrastructure Security Agency in his guidance of March 19, 2020 on the COVID-19 response (available
here). This order does not adopt any subsequent guidance document released by this same agency.

Consistent with the March 19, 2020 guidance document, critical infrastructure workers include some workers in each of the following sectors:

(a) Health care and public health.
(b) Law enforcement, public safety, and first responders.
(c) Food and agriculture.
(d) Energy.
(e) Water and wastewater.
(f) Transportation and logistics.
(g) Public works.
(h) Communications and information technology, including news media.
(i) Other community-based government operations and essential functions.
(j) Critical manufacturing.
(k) Hazardous materials.
(l) Financial services.
(m) Chemical supply chains and safety.
(n) Defense industrial base.

9. For purposes of this order, critical infrastructure workers also include:

(a) Child care workers (including workers at disaster relief child care centers), but only to the extent necessary to serve the children or dependents of workers required to perform in-person work as permitted under this order. This category includes individuals (whether licensed or not) who have arranged to care for the children or dependents of such workers.

(b) Workers at suppliers, distribution centers, or service providers, as described below.

(1) Any suppliers, distribution centers, or service providers whose continued operation is necessary to enable, support, or facilitate another business’s or operation’s critical infrastructure work may designate their workers as critical infrastructure workers, provided
that only those workers whose in-person presence is necessary to enable, support, or facilitate such work may be so designated.

(2) Any suppliers, distribution centers, or service providers whose continued operation is necessary to enable, support, or facilitate the necessary work of suppliers, distribution centers, or service providers described in subprovision (1) of this subsection may designate their workers as critical infrastructure workers, provided that only those workers whose in-person presence is necessary to enable, support, or facilitate such work may be so designated.

(3) Consistent with the scope of work permitted under subprovision (2) of this subsection, any suppliers, distribution centers, or service providers further down the supply chain whose continued operation is necessary to enable, support, or facilitate the necessary work of other suppliers, distribution centers, or service providers may likewise designate their workers as critical infrastructure workers, provided that only those workers whose in-person presence is necessary to enable, support, or facilitate such work may be so designated.

(4) Suppliers, distribution centers, and service providers that abuse their designation authority under this subsection shall be subject to sanctions to the fullest extent of the law.

(c) Workers in the insurance industry, but only to the extent that their work cannot be done by telephone or remotely.

(d) Workers and volunteers for businesses or operations (including both religious and secular nonprofit organizations) that provide food, shelter, and other necessities of life for economically disadvantaged or otherwise needy individuals, individuals who need assistance as a result of this emergency, and people with disabilities.

(e) Workers who perform critical labor union functions, including those who administer health and welfare funds and those who monitor the well-being and safety of union members who are critical infrastructure workers, provided that any administration or monitoring should be done by telephone or remotely where possible.

(f) Workers at retail stores who sell groceries, medical supplies, and products necessary to maintain the safety, sanitation, and basic operation of residences, including convenience stores, pet supply stores, auto supplies and repair stores, hardware and home maintenance stores, and home appliance retailers.

(g) Workers at laundromats, coin laundries, and dry cleaners.
(h) Workers at hotels and motels, provided that the hotels or motels do not offer additional in-house amenities such as gyms, pools, spas, dining, entertainment facilities, meeting rooms, or like facilities.

(i) Workers at motor vehicle dealerships who are necessary to facilitate remote and electronic sales or leases, or to deliver motor vehicles to customers, provided that showrooms remain closed to in-person traffic.

10. Businesses, operations, and government agencies that continue in-person work must adhere to sound social distancing practices and measures, which include but are not limited to:

(a) Developing a COVID-19 preparedness and response plan, consistent with recommendations in Guidance on Preparing Workplaces for COVID-19, developed by the Occupational Health and Safety Administration and available here. Such plan must be available at company headquarters or the worksite.

(b) Restricting the number of workers present on premises to no more than is strictly necessary to perform the business’s, operation’s, or government agency’s critical infrastructure functions or its minimum basic operations.

(c) Promoting remote work to the fullest extent possible.

(d) Keeping workers and patrons who are on premises at least six feet from one another to the maximum extent possible.

(e) Increasing standards of facility cleaning and disinfection to limit worker and patron exposure to COVID-19, as well as adopting protocols to clean and disinfect in the event of a positive COVID-19 case in the workplace.

(f) Adopting policies to prevent workers from entering the premises if they display respiratory symptoms or have had contact with a person with a confirmed diagnosis of COVID-19.

(g) Any other social distancing practices and mitigation measures recommended by the CDC.

11. Any store that remains open for in-person sales under section 5 or 9(f) of this order must:

(a) Establish lines to regulate entry in accordance with subsections (c) and (d) of this section, with markings for patrons to enable them to stand at least six feet apart from one another while waiting. Stores should also explore alternatives to lines, including by allowing customers to wait in their cars for a text message or phone call, to enable social distancing and to accommodate seniors and those with disabilities.
(b) Consider establishing curbside pick-up to reduce in-store traffic and mitigate outdoor lines.

(c) For stores of less than 50,000 square feet of customer floor space, limit the number of people in the store (including employees) to 25% of the total occupancy limits established by the State Fire Marshal or a local fire marshal.

(d) For stores of more than 50,000 square feet:

(1) Limit the number of customers in the store at one time (excluding employees) to 4 people per 1,000 square feet of customer floor space. The amount of customer floor space must be calculated to exclude store areas that are closed under subprovision (2) of this subsection.

(2) Close areas of the store—by cordonning them off, placing signs in aisles, posting prominent signs, removing goods from shelves, or other appropriate means—that are dedicated to the following classes of goods:

(A) Carpet or flooring.

(B) Furniture.

(C) Garden centers and plant nurseries.

(D) Paint.

(3) By April 13, 2020, refrain from the advertising or promotion of goods that are not groceries, medical supplies, or items that are necessary to maintain the safety, sanitation, and basic operation of residences.

(4) Create at least two hours per week of dedicated shopping time for vulnerable populations, which for purposes of this order are people over 60, pregnant women, and those with chronic conditions like heart disease, diabetes, and lung disease.

(e) The director of the Department of Health and Human Services is authorized to issue an emergency order varying the capacity limits described in subsections (c) and (d) of this section as necessary to protect the public health.

12. No one shall advertise or rent a short-term vacation property except as necessary to assist in housing a health care professional or volunteer aiding in the response to the COVID-19 crisis.

13. Nothing in this order should be taken to supersede another executive order or directive that is in effect, except to the extent this order imposes more stringent limitations on in-person work, activities, and interactions. Consistent with prior
guidance, a place of religious worship, when used for religious worship, is not subject to penalty under section 17 of this order.

14. 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.

15. This order takes effect on April 9, 2020 at 11:59 pm and continues through April 30, 2020 at 11:59 pm. When this order takes effect, Executive Order 2020-21 is rescinded. All references to that order in other executive orders, agency rules, letters of understanding, or other legal authorities shall be taken to refer to this order.

16. I will evaluate the continuing need for this order prior to its expiration. In determining whether to maintain, intensify, or relax its restrictions, I will consider, among other things, (1) data on COVID-19 infections and the disease’s rate of spread; (2) whether sufficient medical personnel, hospital beds, and ventilators exist to meet anticipated medical need; (3) the availability of personal protective equipment for the health-care workforce; (4) the state’s capacity to test for COVID-19 cases and isolate infected people; and (5) economic conditions in the state.

17. Consistent with MCL 10.33 and MCL 30.405(3), a willful violation of this order is a misdemeanor.

Given under my hand and the Great Seal of the State of Michigan.

Date: April 9, 2020
Time: 2:07 pm

[Signature]
GRETCHEN WHITMER
GOVERNOR

By the Governor:

[Signature]
SECRETARY OF STATE