GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2020-126
December 16, 2020

SUBJECT: Modifying Phase Two Limits on Large Gatherings: Confirming 25% Caps on Occupancy Caps for Constitutionally Protected, Recreational, and Commercial Activity

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia pursuant to section 422 of the District of Columbia Home Rule Act, approved December 24, 1973, Pub. L. 93-198, 87 Stat. 790, D.C. Official Code § 1-204.22 (2016 Repl.); in accordance with the Coronavirus Support Second Congressional Review Emergency Amendment Act of 2020, effective August 19, 2020, D.C. Act 23-405, the Public Health Emergency Authority Additional Extension Emergency Amendment Act of 2020, effective October 5, 2020, D.C. Act 23-411, and any substantially similar subsequent emergency or temporary legislation; section 5 of the District of Columbia Public Emergency Act of 1980, effective March 5, 1981, D.C. Law 3-149, D.C. Official Code § 7-2304 (2018 Repl.); section 5a of the District of Columbia Public Emergency Act of 1980, effective October 17, 2002, D.C. Law 14-194, D.C. Official Code § 7-2304.01 (2018 Repl.); the Coronavirus Support Temporary Amendment Act of 2020, effective October 9, 2020, D.C. Act 23-334, 67 DCR 12236; section 1 of An Act To Authorize the Commissioners of the District of Columbia to make regulations to prevent and control the spread of communicable and preventable diseases ("Communicable and Preventable Diseases Act"), approved August 11, 1939, 53 Stat. 1408, D.C. Official Code §§ 7-131 *et seq.* (2018 Repl.); and in accordance with Mayor's Order 2020-045, dated March 11, 2020; Mayor's Order 2020-046, dated March 11, 2020; Mayor's Order 2020-050, dated March 20, 2020; Mayor's Order 2020-063, dated April 15, 2020; Mayor's Order 2020-066, May 13, 2020; Mayor's Order 2020-067, dated May 27, 2020; Mayor's Order 2020-079, dated July 22, 2020, and Mayor's Order 2020-103, dated October 7, 2020, it is hereby **ORDERED** that:

I. BACKGROUND

A. The District of Columbia, like the rest of the country, is currently confronting the worst surge of coronavirus cases yet, with the expectation being that nationwide, more people will die each day for the next two months as a result of the COVID-19 virus than were killed in the attacks of September 11, 2001.

B. The daily case rate in the District has shot up to 35.59 cases per 100,000 persons, having multiplied nearly eight-fold since early July. The District's overall number of positive cases totals 25,602 and 720 District residents have lost their lives to the virus already.

C. The rate of transmission, percent hospital utilization, and test positivity rates are rising.

D. These circumstances have warranted a tightening, not a loosening, of several Phase Two requirements, and further restrictions are contemplated.

E. Large gatherings remain discouraged. With such a high rate of community transmission, some persons at large gatherings are likely to be exposed to the virus. Such exposure is likely even when a range of additional preventative actions are taken, such as adherence to social distancing rules, mask wearing, and staying at home if a person is asymptomatic, after recent travel, or after recent exposure to someone with COVID-19. Persons who attend large gatherings may think that they are freely assuming the risk of attending the gathering, but those whom they may infect have assumed no such risk. The larger the gathering, the more the exposure. A recent lawsuit appears to insist on a constitutional right to hold indoor worship services of even a thousand persons or more at the largest facilities, which flies in the face of all scientific and medical advice and will doubtlessly put parishioners in harm's way.

F. Recent lawsuits also imply that First Amendment protests that occurred in the District in the wake of the homicide of George Floyd were permitted or authorized by the District government. Quite to the contrary, the District government issued no permits for those protests or any other large or mass gathering during the COVID-19 state of emergency, per Mayor's Order. The federal government has, however, issued some permits for large gatherings.

G. The vast majority of businesses and houses of worship have complied with the many rules that have been necessary to combat the virus relating to social distancing, mask wearing, facilitating contact tracing, queuing and reservations, and the like.

H. The lawsuit argues that houses of worship and restaurants should be treated the same, or the same as other activities where the large gatherings limits are not imposed. Our review indicates that the maximum number of persons at the largest restaurant, based on twenty-five percent (25%) of their Certificates of Occupancy, is approximately two hundred fifty (250) persons. This Order ensures parity in terms of capacity limits – both as a percentage and a cap on attendance – among more activities.

I. In order to resolve litigation, this Order repeals the numeric cap of fifty (50) persons on gatherings at houses of worship and allows physically large facilities to accommodate more worshippers based on their overall capacity, up to a maximum of two hundred fifty (250) persons. It further establishes additional limits for restaurants, fields, gyms, and other recreational facilities, guided tours, libraries, real estate and construction, retail food sellers, and other essential and non-essential retail businesses.

II. MODIFICATION OF MASS GATHERING LIMITS FOR HOUSES OF WORSHIP

A. Section V.3 of Mayor's Order 2020-119 (Nov. 23, 2020) is hereby modified to provide that houses of worship may admit no more than twenty-five percent (25%) of their capacity as specified in their Certificate of Occupancy for the room or area where worship services will be held, or two hundred fifty (250) persons, whichever is fewer. This total limit includes all persons: worshippers, clergy and staff.

B. The vast majority of houses of worship have accommodated their congregations' spiritual needs through televised or web-based services, individual counseling, small sacramental services, and online giving. Such practices continue to be encouraged.

C. Houses of worship must adhere to all guidance other than the previous numeric caps on attendees provided by the Department of Health (also known as DC Health). The following is a non-exclusive list of additional restrictions:

1. Houses of worship conducting in-person services must establish a reservation system or some means of ensuring that there will not be crowding inside or outside the facility. Further, they must cooperate in contact tracing if contacted by DC Health or contact tracers employed by it or any jurisdiction's health officials.

2. Safety protocols must be written and available to DC Health officials upon reasonable request. Safety protocols must include mandatory masking, plans for ingress and egress of worshippers, hygiene and airflow, and wellness checks.

3. Household members attending together may be seated as a group, and each group must be seated at least six (6) feet in all directions from each other group.

4. All other activities, such as religious education classes, youth events, support groups, and any other social programming such as wedding receptions, wakes, or memorial services not involving religious sacraments or core religious services must follow gathering size limitations, currently, ten (10) persons indoors or twenty-five (25) outdoors.

III. TOTAL CAPACITY CAPS AND ADDITIONAL PERCENTAGE OCCUPANCY CAPS AT OTHER FACILITIES

A. Section III of Mayor's Order 2020-119 is modified, such that restaurants may neither exceed twenty-five percent (25%) of their capacity as specified on their Certificate of Occupancy, nor have more than two hundred fifty (250) persons, indoors, including servers, patrons, and other staff, whichever is fewer, at any one time.

B. Section IV of Mayor's Order 2020-123 is modified, to clarify that even with small, spaced cohorts of participants in exercise or using Department of Parks and Recreation (DPR) facilities, no more than two hundred fifty (250) persons may be on a field or in a particular DPR facility at any one time.

C. Section VI.2. of Mayor's Order 2020-075 is modified to eliminate all guided tours, even where persons are socially distanced, and to cap the total capacity allowed at museums at two hundred fifty (250) persons at any one time, per floor. The previous cap of fifty (50) persons in any auditorium, self-contained exhibit hall, or other room or facility within the museum is hereby reduced to twenty-five (25) persons.

D. Further, Section VI.4. of Mayor's Order 2020-075 is modified with respect to libraries. The capacity limits for libraries, previously fifty percent (50%) of the facility's capacity as specified on its Certificate of Occupancy, is hereby reduced to allow only twenty-five percent (25%) of rated capacity. This limit shall apply to the building as a whole, as well as all rooms within the library. And no more than two hundred (200) persons may be allowed in any particular library at any one time, whichever is fewer.

E. Section XI.3. of Mayor's Order 2020-075 is clarified and amended to provide that no gym or facility identified in that section may have more persons than twenty-five percent (25%) of its rated capacity on its Certificate of Occupancy indoors at any one time, and no more than two hundred fifty persons (250) at the facility at any one time, whichever is fewer.

F. Section XI.4. of Mayor's Order 2020-075 is modified to provide that recreational facilities such as recreation centers, bowling alleys, climbing gyms, squash or racquet clubs, skating rinks, and indoor skateboard parks may have no more than twenty-five (25) persons per room; no more than twenty-five percent (25%) of its rated capacity on its Certificate of Occupancy, and no more than two hundred fifty (250) persons at the facility inside at any one time, whichever is fewer.

G. Section XII of Mayor's Order 2020-075 related to real estate, construction, and development is hereby clarified and amended to provide that there not be any large gatherings at any ground-breaking, grand opening or other event, whereby any such outdoor gathering is limited to not more than twenty-five (25) persons, and that indoors, no more than ten (10) persons who are not actively participating in physical construction be in the same room at any one time.

H. Retail food sellers, previously empowered to set safe limits on numbers of customers pursuant to Mayor's Order 2020-058, are now instructed to set limits of twenty-five percent (25%) of capacity as specified on their Certificate of Occupancy or two hundred fifty (250) persons, whichever is fewer, inside at any one time. Queuing for admittance shall be outdoors and patrons shall be no fewer than six (6) feet apart from persons outside their household.

I. Other essential and non-essential retail businesses are limited to no more than twenty-five percent (25%) of their capacity as specified on their Certificate of Occupancy, or two hundred fifty (250) persons, whichever is fewer, inside at any one time.

IV. SUPERSESSION

This Order supersedes any Mayor's Order issued during the COVID-19 public health emergency to the extent of any inconsistency.

V. ENFORCEMENT

A. Any individual or entity that knowingly violates this Order may be subject to civil and administrative penalties authorized by law, including sanctions or penalties for violating D.C. Official Code § 7-2307, including civil fines or summary suspension or revocation of licenses.

B. The District of Columbia reserves the right to exercise provisions of the Communicable and Preventable Diseases Act, approved August 11, 1939, 53 Stat. 1408, D.C. Official Code §§ 7-131 *et seq.*, if warranted, and to issue regulations providing for civil and criminal penalties and injunctive relief for violations of this Order.

VI. EFFECTIVE DATE AND DURATION

This Order shall be effective on 12:01 a.m. on Thursday, December 17, 2020, and shall continue to be in effect through December 31, 2020, or until the date to which the COVID-19 public emergency and public health emergency are extended, whichever is later.

MURIEL BOWSER
MAYOR

ATTEST: Kimberly A. Bassett
KIMBERLY A. BASSETT
SECRETARY OF STATE OF THE DISTRICT OF COLUMBIA