EXECUTIVE ORDER NO. 20-65

TEMPORARY FREEZE TO ADDRESS SURGE IN COVID-19 CASES IN OREGON

Since January 2020, the State of Oregon has been engaged in responding to the public health threat posed by the novel infectious coronavirus (COVID-19). As the threat escalated, the State's response elevated to meet the threat. On March 8, 2020, I declared a state of emergency pursuant to ORS 401.165 et seq., and directed certain immediate response actions. Thereafter, the World Health Organization declared that the COVID-19 outbreak is a global pandemic, and the President of the United States declared the COVID-19 outbreak a national emergency.

During March and April 2020, as COVID-19 continued to spread around the world, I took a series of actions aimed at slowing the spread of the virus, and to mitigate the public health and economic impacts of the pandemic. On March 23, 2020, I ordered Oregonians to "Stay Home, Save Lives," directing individuals to stay home to the greatest extent possible, ordering the closure of specified retail businesses, requiring physical distancing measures for other public and private facilities, and imposing requirements for outdoor areas and licensed childcare.

Those actions helped prevent and control the spread of COVID-19 in Oregon, and increased the state's preparedness to live with this virus until a vaccine or cure can be found. Following the success of these early measures, in late April and early May 2020, I began to take steps to ease the restrictions that had been imposed in March and April. I signed executive orders directing the State to begin a data-driven, phased reopening.

This reopening process has been gradual and cautious, and has not been linear. In response to rising case numbers during the summer, I imposed additional measures, including face-covering requirements for individuals. Outbreaks and community spread in certain counties also have required us to reimpose restrictions at times, to maintain public health and safety. Even before the current surge in cases, it was clear that continued work was necessary to bring virus levels down to where it is safe for K-12 schools across the state to fully reopen for in-person instruction, among other critical priorities.

Over the past nine months, Oregon has fared better than many other states when it comes to the health impacts of COVID-19. However, this virus has remained very dangerous even in Oregon. As of today, there have been at least 58,570 cases and 778 deaths in Oregon, with more than 11 million cases and more than 247,000 deaths from COVID-19 nationwide.

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And right now, in Oregon, like the rest of the country, new cases of COVID-19 are spiking at an alarming rate, as we enter cold and flu season, as the weather turns and grows colder, and as Oregonians spend more time indoors. We have gone from seeing around 200-300 cases a day in September, to over 1,000 cases a day in mid-November. These cases are occurring in communities around the state. And test positivity is increasing sharply as well, an indication that COVID-19 is widespread in our communities.

This is a very dangerous situation.

As a result, our hospitals have been sounding the alarm. Hospital census due to COVID patients needing hospitalization is growing rapidly across most of the state. Hospitals have started to utilize tools to maximize patient access to hospital beds, but the tools are not infinite. In recent days, several hospitals across the state have voluntarily begun to reduce some surgeries to preserve beds and staff capacity. This is not just happening in Oregon. The dreaded winter surge is here. Infection records are being set in states across the country. This means we cannot look to other states to share their staffing and hospital beds because they too are experiencing the surge.

The cycle of this virus is such that if we are seeing case rates topping 800-1,000 per day now, that means our hospitals are headed for very dark days ahead. Actions taken now will help prevent lives from being lost—not just from COVID-19, but from other diseases or accidents that lead people to need hospital-level care, which they would not be able to get if hospital beds and hospital staff are fully occupied with COVID-19 patients.

The situation is dire, and requires an urgent, immediate, and decisive response to quell the current surge in COVID-19 infections, before it is too late.

NOW THEREFORE, IT IS HEREBY DIRECTED AND ORDERED THAT:

Pursuant to ORS 401.168, ORS 401.175, ORS 401.188, ORS 433.441, and ORS 401.035, I am ordering the following:

1. **Effective date**: This Executive Order is effective Wednesday November 18 through Wednesday December 2, unless extended or terminated earlier by the Governor.

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2. **Temporary freeze to control surging COVID-19 cases**: In light of the ongoing spike in COVID-19 cases, the state will enter a "freeze period" for the duration of this Executive Order. During the freeze period, the following restrictions will be in place, with additional definitions, details, and safety protocols outlined in Oregon Health Authority (OHA) guidance for activities that are allowed to proceed.

3. **Gatherings during the freeze period**: Gatherings present particular risks for the spread of COVID-19, as sustained contact with others in large or small groups presents an increased risk of spreading the disease and, in the event an infected person attends a large gathering, makes the work of rapid, effective contact-tracing much more difficult. Accordingly, pursuant to ORS 401.168(1), ORS 401.188(2), and ORS 433.441(3)(a), (b), (d) and (f):

   a. **At home and social gatherings**, as defined in OHA guidance, are limited to a maximum of 6 people, from not more than two households.

   b. **Faith institutions** may remain open, but are limited to a maximum of 25 people indoors, or 50 outdoors, and must comply with applicable OHA guidance. No food or drinks may be served for on-site consumption, unless integral to a religious service. During the freeze period, individuals and institutions are strongly encouraged to consider remote, drive in, or outdoor options, or canceling or postponing the event, if possible.

   c. **Funeral services/ceremonies held at funeral homes, mortuaries, cemeteries or faith institutions** may take place, but are limited to a maximum of 25 people indoors, or 50 outdoors, and must comply with applicable OHA guidance. No food or drinks may be served for on-site consumption, unless integral to a religious service.

   d. Paragraph 3 of this Executive Order does not apply to workplaces, banks and credit unions, gas stations, hotels or motels, shelter and meal programs, encampments of people experiencing homelessness, health care facilities, pharmacies, child care facilities, schools, higher education institutions, the state executive, legislative, and judicial branches, federal government, local governments, and tribal governments, or other businesses or activities (e.g., retail, including

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grocery stores) that are subject to other directives in my Executive Orders or OHA guidance.

e. The Governor, or OHA with the Governor's approval, may modify the directives of paragraph 3 of this Executive Order, via guidance, as necessary.

4. **Business and sector-specific restrictions during the freeze period**: Pursuant to ORS 401.168(1), ORS 401.188(1) to (3), and ORS 433.441(3)(a), (b), and (f), businesses must comply with any applicable OHA guidance, including but not limited to employer guidance, and face coverings guidance, which may be amended from time to time. Additionally, the following requirements apply:

a. **Food and drink establishments**:

(1) During the freeze period, restaurants, bars, taverns, brew pubs, wine bars, wineries, cafes, food courts, coffee shops, clubs, or other similar establishments that offer food or drink may not offer or allow on-premises consumption of food or drink, inside or outside. Establishments may offer food or drink for off-premises consumption (e.g., take-out or drive-through) or for delivery.

(2) Paragraph 4(a)(1) of this Executive Order does not apply to health care facilities, child care facilities, workplaces, government buildings, emergency response activities, school-based food programs, encampments of people experiencing homelessness, and shelter and meal programs serving vulnerable populations. Such places are encouraged to use physical distancing, staggered schedules, take-out, and other similar measures to reduce the risk associated with the spread of COVID-19, and must follow any applicable OHA guidance.

b. **Certain businesses and activities closed/prohibited during the freeze period**: Subject to any modifications made to the following list (through OHA guidance, at the direction of the Governor), operation of the following businesses and activities are prohibited during the freeze period:

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(1) Gyms and fitness organizations;

(2) Indoor recreational activities, museums;

(3) Venues that host or facilitate indoor or outdoor events, unless they are hosting an event that is allowed to proceed under sector-specific guidance, and are in compliance with that guidance;

(4) Zoos, gardens, aquariums, outdoor entertainment activities as defined in OHA guidance;

(5) Indoor pools, sports, sports facilities or athletic activities.

c. **Certain sectors subject to OHA guidance during the freeze period**: Certain specified sectors of Oregon's economy may continue to operate during the freeze period, provided that they comply with applicable sector-specific OHA guidance, amended from time to time, which may set forth mandatory safety protocols, capacity limits, and additional restrictions beyond what had been in place prior to the freeze period. Activities and businesses subject to this requirement include, but are not limited to:

(1) Grocery stores and pharmacies may continue to operate, but are limited to 75% capacity;

(2) Retail, farmers markets, indoor and outdoor malls, and state agency operations that serve the public may continue to operate, but are limited to 75% capacity;

(3) Personal services, as defined in OHA guidance;

(4) Outdoor recreation and outdoor sports, including Division 1 college sports;

(5) Drive-ins;

(6) Transit, youth programs, self-service operations, and such other sectors for which OHA issues freeze period guidance.

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d. **Sectors without specific prohibitions or OHA guidance** may operate, provided they comply with any applicable OHA guidance, including but not limited to guidance for employers.

5. **Workplace restrictions during the freeze period**: Pursuant to ORS 401.168(1), ORS 401.188(1) to (3), and ORS 433.441(3)(a), (b), (d) and (f):

a. All businesses and non-profit entities with offices in Oregon shall facilitate telework and work-at-home by employees, to the maximum extent possible. Work in offices is prohibited whenever telework and work-at-home options are available, in light of position duties, availability of teleworking equipment, and network adequacy.

b. When telework and work-from-home options are not available, businesses and non-profit entities must designate an employee or officer to establish, implement, and enforce physical distancing policies, consistent with OHA guidance. Such policies also must address how the business or non-profit will maintain physical distancing protocols for business-critical visitors.

c. Businesses and non-profit entities must comply with any applicable OHA guidance, including but not limited to guidance for employers. This Executive Order does not apply to offices and buildings owned or occupied by the state legislative and judicial branches, federal government, local governments, and tribal governments.

6. **Remote, drive-through, and outdoor options encouraged**: For all activities not prohibited during the effective dates of this Executive Order, individuals, families, businesses, event organizers and faith leaders are strongly encouraged to consider remote, drive-through, curbside, delivery and outdoor options, or canceling or postponing the activity.

7. **Exceptions**: In addition to the exceptions set forth in the directives above, the following settings are exempt from the requirements of this Executive Order, although they must continue to comply with other Executive Orders and related guidance applicable to their operations.

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a. **Higher education, schools, childcare, youth programs**: Higher education institutions shall continue to comply with Executive Order 20-28, including as extended or modified by further Executive Orders, and any guidance from the Higher Education Coordinating Commission. Childcare facilities, and any expansion or restriction of childcare services, will proceed pursuant to Executive Order 20-19, including as modified by further Executive Orders, and any guidance from the Department of Education, Early Learning Division, Office of Child Care. K-12 schools continue to be subject to Executive Order 20-29, including as extended or modified by further Executive Orders, and any guidance from the Department of Education or OHA. Settings covered by the Executive Orders listed in this subparagraph are exempt from the requirements of this Executive Order. Notwithstanding anything to the contrary in this Executive Order, youth programs and programs caring for children that are operated by government entities must continue to comply with applicable OHA guidance issued under the authority of Executive Order 20-27.

b. **Shelters and emergency response**: Emergency response activities, shelter and meal programs serving vulnerable populations, and encampments of people experiencing homelessness are exempt from the requirements of this Executive Order. They must, however, continue to comply with applicable OHA guidance.

c. **Certain employer-provided housing**: Settings covered by Executive Order 20-58 must continue to comply with Executive Order 20-58, and are exempt from the requirements of this Executive Order.

8. **Guidance to implement the directives of this Executive Order**: All activities allowed to proceed during the freeze period are required to follow additional safety protocols, including but not limited to protocols around capacity limits and limits on the number of people; physical distancing; face coverings; hand hygiene; enhanced cleaning protocols; and other protocols to facilitate the public health response to COVID-19. The particulars of these mandatory safety protocols will depend on the activity. These additional mandatory safety protocols will be provided for in OHA guidance. Accordingly, I order the following:

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a. **OHA to issue guidance for the public, employers, and sectors**:

(1) I delegate to OHA the authority to develop and issue, and from time to time revise, binding guidance for the public, for employers, and for particular sectors of the economy, to implement the directives of this Executive Order. OHA guidance may also provide definitions, clarifications, or needed modifications to the directives in this Executive Order. Guidance issued by OHA pursuant to this authority is part of the directives of this Executive Order, and will be approved by the Governor before issuance. Upon approval, it will be published online at the OHA website (https://govstatus.egov.com/OR-OHA-COVID-19) and also on Governor Brown's website (https://govstatus.egov.com/or-covid-19/).

(2) As described more fully in paragraph 11 of this Executive Order, once approved by the Governor and published, guidance issued to implement this Executive Order is enforceable to the same extent this Executive Order is enforceable.

b. **Compliance with OHA guidance**: In order to continue to control the spread and risk from COIVD-19 in Oregon, individuals, businesses, and other covered entities are directed to comply with applicable OHA guidance issued under the authority of this Executive Order. Sectors without specific prohibitions or guidance shall operate under any generally applicable OHA guidance, including but not limited to guidance for employers.

c. **Existing guidance**: Existing OHA guidance, issued under the authority of Executive Orders in effect, will continue in effect, provided that it is not inconsistent with the directives of this Executive Order. Individuals and businesses are directed to continue to comply with that guidance as well.

9. **Executive Order 20-27**: Directives of Executive Order 20-27, and any guidance and modifications issued pursuant to that Executive Order by

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agencies, with the exception of directives regarding travel, remain in effect to the extent that they are not inconsistent with the directives of this Executive Order. However, where the two are inconsistent, this Executive Order, and guidance issued under it, supersedes the directives of Executive Order 20-27 and any guidance issued under that Executive Order.

10. **Legal effect**: This Executive Order is issued under the authority conferred to the Governor by ORS 401.165 to 401.236. Pursuant to ORS 401.192(1), the directives set forth in this Executive Order shall have the full force and effect of law, and any existing laws, ordinances, rules and orders shall be inoperative to the extent they are inconsistent with this exercise of the Governor's emergency powers.

11. **Enforcement**:

    a. This Executive Order, and any guidance issued by OHA or another state agency designated by the Governor to implement this Executive Order, are public health laws as defined in ORS 431A.005, and may be enforced as permitted under ORS 431A.010, including but not limited to enforcement via civil penalties as provided in that statute, which has a statutory maximum fine of $500 per day per violation.

    b. In addition to any other penalty that may be imposed under applicable laws, any person, business, or entity found to be in violation of this Executive Order or any guidance issued by OHA or other state agencies to implement this Executive Order is subject to the penalties described in ORS 401.990, in particular, that any person knowingly violating this executive order shall, upon conviction thereof, be guilty of a Class C misdemeanor, which is punishable by 30 days in jail or a fine of $1,250 or both.

    c. I direct other state agencies with regulatory enforcement authority, including but not limited to Oregon Occupational Safety and Health (Oregon OSHA) and the Oregon Liquor Control Commission, to continue their efforts to protect the lives and health of Oregonians by enforcing the directives in this Executive Order under existing civil enforcement authorities.

    d. I direct the Superintendent of the Oregon State Police to coordinate with law enforcement agencies throughout the state to enforce the

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directives of this executive order, as appropriate. It is my expectation that law enforcement agencies will primarily focus on referral to civil enforcement authorities, and will reserve criminal citations for willful and flagrant violations of this order.

e. These enumerated enforcement mechanisms are in addition to any other private rights of action or other enforcement mechanism that may exist in statute or at common law, or under federal law.

f. Businesses and other entities that fail to comply with the applicable requirements of this Executive Order, or guidance issued to implement this Executive Order, may be closed until they demonstrate compliance.

12. **Severability**: If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this Executive Order is for any reason held to be invalid, such holding shall not affect the validity of the remaining portions of this Order.

13. **Discretion; no right of action**: Any decision made by the Governor pursuant to this Executive Order is made at her sole discretion. This Executive Order is not intended to create, and does not create, any individual right, privilege, or benefit, whether substantive or procedural, enforceable at law or in equity by any party against the State of Oregon, its agencies, departments, or any officers, employees, or agents thereof.

Done at Salem, Oregon, this 17th day of November, 2020.

Kate Brown

Kate Brown
GOVERNOR

ATTEST:

Bev Clarno

Bev Clarno
SECRETARY OF STATE

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