State of New Mexico

Michelle Lujan Grisham
Governor

EXECUTIVE ORDER 2021-008

RENEWING ORDER THAT CERTAIN IN-PERSON SHAREHOLDERS' AND MEMBERS' MEETINGS ARE TEMPORARILY UNLAWFUL AND DIRECTING THAT SUCH MEETING MAY BE HELD VIRTUALLY

WHEREAS, on March 11, 2020, I declared in Executive Order 2020-004 a statewide public health emergency pursuant to the Public Health Emergency Response Act, NMSA 1978, §§ 12-10A-1 to -19, and invoked my powers under the All Hazard Emergency Management Act, NMSA 1978, §§ 12-10-1 to -10, due to the COVID-19 pandemic. The statewide public health emergency declared in Executive Order 2020-004 was subsequently renewed several times, most recently on February 5, 2021 in Executive Order 2021-004, which renewed the state of emergency until March 5, 2021.

WHEREAS, consistent with the powers provided during a public health emergency under the Public Health Emergency Response Act, the Secretary of Health has issued a series of Public Health Emergency Orders ("PHEO") designed to restrict public gatherings as a necessary measure to slow the spread of COVID-19 and to mitigate its potentially devastating impacts on public health. The most recent PHEO, issued on February 24, 2021, prohibits, with certain limited exceptions for businesses and non-profit entities, nearly all public or private "mass gatherings" of more than five (5) individuals in a single room or connected space in counties in Red Level, ten (10) individuals in counties in Yellow Level, twenty (20) individuals in counties in Green Level, and one hundred fifty (150) individuals in counties in Turquoise Level. It also advises against any

out-of-state travel and against leaving home for any reason other than those outings absolutely necessary for health, safety, or welfare.

WHEREAS, in-person components of annual and special shareholders' meetings have not been specifically exempted from the PHEO's prohibition on "mass gatherings." There are good reasons not to exempt this kind of meeting, which could require a large group of individuals to travel from different parts of New Mexico and from out-of-state, and to gather together indoors in close proximity for a lengthy meeting. At the conclusion of the meeting, those individuals would then disperse back home and potentially spread COVID-19 in their home communities. For these reasons, in-person shareholders' meetings that could bring more individuals together in a single enclosed space than permitted by the operative PHEO are temporarily unlawful.

WHEREAS, although in-person shareholders' meetings and other in-person forms of collective corporate governance are both impractical and unwise during the COVID-19 pandemic, it is important that corporate governance and accountability continue in the most normal manner that is possible during this time. Recognizing this fact, the United States Securities and Exchange Commission (the "SEC") issued "Staff Guidance for Conducting Annual Meeting in Light of COVID-19 Concerns" (the "SEC Guidance") on March 13, 2020, which relaxes certain requirements and explains how virtual or hybrid meetings can be lawfully conducted under federal law during the COVID-19 pandemic.

WHEREAS, it is important that entities that required to hold shareholders' meetings and similar meetings receive clear guidance as to how such meetings can be held in compliance with temporary PHEOs and other order necessitated by COVID-19 and to provide such guidance for a period of serval months so that such entities can plan accordingly.

WHEREAS, the All Hazard Emergency Management Act authorize me to "provide those resources and services necessary to minimize economic or physical harm until a situation becomes stabilized" and to take any "action necessary to protect the public health, safety and welfare." NMSA 1978, § 12-10-4(B)(3). That Act also authorizes me to issue necessary orders to carry out the State's emergency response. NMSA 1978, § 12-10-4(B)(2).

NOW, THEREFORE, I, Michelle Lujan Grisham, Governor of the State of New Mexico, by virtue of the authority vested in me by the Constitution and laws of the State of New Mexico, hereby **ORDER** and **DIRECT** as follows:

1. Any entity with a shareholders' meeting scheduled in April, May, and June of 2021 shall conduct such meeting by audiovisual means. Any statutory provisions that could be read to require in-person attendance at a shareholders' meeting, including but not limited to NMSA 1978, Sections 53-11-28 and 53-11-29, is preempted by any and all PHEOs issued by the Department of Health. Moreover, any corporate bylaw requiring in-person shareholders' meetings is temporarily invalid and unenforceable to the extent that it would require violating a PHEO. NMSA 1978, § 53-11-27.

2. Any entity required to hold an in-person shareholders' meeting shall permit shareholder attendance and/or participation through a "virtual" meeting. A "virtual" meeting utilizes audio-visual technology to ensure shareholder attendance of the meeting and participation in the meeting to the same extent as would be allowed through an in-person meeting. The entity shall provide notice of the meeting and conduct the meeting according to the requirements and recommendations set forth in the SEC Guidance. The entity shall take any additional steps it deems necessary to inform shareholders of virtual attendance and participation options.

3. Any statutory provisions that require an entity making available a list of shareholders who are entitled to vote at such meeting for a period of 10 days before the meeting for physical inspection at its registered office during normal business hours, as well as during the meeting, are hereby suspended, provided that such information is otherwise made available to a shareholder through a reasonably accessible electronic network or otherwise as determined by the corporation upon request in writing by a shareholder to the entity's secretary before the meeting.

4. Any nonprofit entity with a members' meeting scheduled in April, May, and June of 2021 may not convene an in-person members' meeting during those months because such a meeting would violate lawful orders from the Department of Health and would also constitute an unacceptable public health risk. Any statutory provisions that could be read to require in-person attendance at a members' meeting, including but not limited to NMSA 1978, Sections 53-8-13 and 53-8-14, is preempted by any and all PHEOs issued by the Department of Health. Moreover, any corporate bylaw of a nonprofit requiring in-person members' meetings is temporarily invalid and unenforceable to the extent that it would require violating a PHEO. NMSA 1978, § 53-8-12(A).

5. Any nonprofit entity that is prohibited from holding an in-person members' meeting to allow for member attendance and/or participation through a "virtual" meeting. A "virtual" meeting utilizes audio-visual technology to ensure member attendance of the meeting and participation in the meeting to the same extent as would be allowed through an in-person meeting. The nonprofit entity shall provide notice of the meeting and conduct the meeting according to any requirements and recommendations under federal law. The entity shall take any additional steps it deems necessary to inform members of virtual attendance and participation options.

6. This Order's directives are limited to those shareholder meetings or non-profit members' meetings that bring together more than the specified amount of individuals permitted to gather under the "mass gathering" restriction or other relevant occupancy restrictions in the operative PHEO.

I **FURTHER ORDER** and **DIRECT** as follows:

1. This Order supersedes any previous orders, proclamations, or directives to the extent they are in conflict.

2. This Order shall take effect immediately and shall remain in effect until renewed, modified, or rescinded.

ATTEST:

Maggie Toulouse Oliver

MAGGIE TOULOUSE OLIVER
SECRETARY OF STATE

DONE AT THE EXECUTIVE OFFICE
THIS 3RD DAY OF MARCH 2021

WITNESS MY HAND AND THE GREAT
SEAL OF THE STATE OF NEW MEXICO

Michelle Lujan Grisham

MICHELLE LUJAN GRISHAM
GOVERNOR