EXECUTIVE ORDER NO. 20-66

RISK AND SAFETY FRAMEWORK: COUNTY-BY-COUNTY METRICS-BASED APPROACH TO CONTROLLING COVID-19 TRANSMISSION TO CONSERVE HOSPITAL CAPACITY AND PROTECT HUMAN HEALTH AND HUMAN LIVES

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 is widely available. 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 transmission levels down to levels that allow K-12 schools across the state to reopen for in-person instruction, among other critical priorities.

Over the past nine months, due to these measures and the collective sacrifices and hard work of Oregonians, Oregon has fared better than many other states when it comes to the health impacts of COVID-19. Both our case numbers and our fatality rate have been lower than the national average. This has real impacts. Put simply, the protective measures we have implemented, combined with the hard work and sacrifice of Oregonians, have saved lives.

However, this pandemic remains very dangerous even in Oregon. As of today, there have been at least 78,160 cases and 953 deaths in Oregon, with more than 13,000,000 cases and more than 269,000 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 more than 1,000 cases a day in November. These cases are occurring in communities around the state. Test positivity rates are increasing sharply as well, an indication that COVID-19 is widespread in our communities. Additionally, the holiday season gives further cause for concern. Our history with this virus is such that after each holiday so far, we have experienced a spike in cases. Given the surge we are in right now, a further spike could be devastating.

The situation is truly dire.

As a result, our hospitals have been sounding the alarm. Hospital census due to COVID-19 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. 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 1,000 per day now—and anticipating increased transmission over the holidays—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.

We are all buoyed by the hopeful news regarding COVID-19 vaccines, and hopeful that distribution of one or more vaccines against COVID-19 may begin in the not-too-distant future. However, unfortunately, as federal, state, and private sector professionals have long advised, distribution of those vaccines, and the vaccines' ability to bring community spread down to acceptable levels, will take time.

Put simply, despite hopeful news on the vaccine front, it is clear that we will still be living with COVID-19 for some time. In order to save lives and protect human health, the state must continue its efforts to control COVID-19 using the basic mitigation measures that have defined this pandemic: wearing a face covering, keeping physical distance, washing hands, avoiding touching our face.

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This Executive Order sets forth the framework for using data-driven indicators of disease spread to guide measures to reduce risk from COVID-19. That is, in counties where disease spread is higher, more restrictive measures will need to be implemented. In counties where disease spread is lower, measures may be eased. The degree of protective measures in the community will be tied directly to the spread of COVID-19 in the community, and may increase or decrease periodically, as spread within the county increases or decreases. It is important to note, however, that there is no zero-risk category.

This is not forever. It is just for now. By continuing to make sacrifices in the near term to protect our friends, families, neighbors, and fellow Oregonians, we can help ensure no one is missing when we gather around our dining room tables and in public spaces in the future. There are no shortcuts in this pandemic. But we will get through it the same way we have so far: together.

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. **Replacing Executive Orders 20-27 and 20-65**. As of the effective date of this Executive Order, Executive Orders 20-27 and 20-65 are rescinded, and replaced by the directives in this Executive Order.

2. **Oregon Health Authority (OHA) to issue guidance for the public, employers, and sectors**. Throughout this pandemic, Oregon's response has shifted as conditions on the ground have shifted, and as emerging science and data have given us greater clarity regarding the best ways to manage this pandemic. Maintaining the flexibility to nimbly adjust as conditions and knowledge change is critical to an effective emergency response. Accordingly:

    a. 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, and may identify certain business types, the operation of which is prohibited during this emergency. The Governor will approve OHA guidance before it is issued. Upon approval, the OHA guidance will

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become part of the directives of this Executive Order and will be published online on Governor Brown's website (https://govstatus.egov.com/or-covid-19/) and the OHA website (https://govstatus.egov.com/OR-OHA-COVID-19).

b. As described more fully in paragraph 10 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.

c. 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.

d. Any guidance previously issued under the authority of Executive Orders 20-27 or 20-65 continues under the authority of this Executive Order unless and until that guidance is rescinded or modified by OHA or the issuing agency.

3. **Risk Level Metrics**.

a. Establishing Risk Level Metrics.

i. Using the procedure described in paragraph 2 of this Executive Order, OHA is directed to develop and, upon approval by the Governor, publish Risk Level Metrics to systematically measure and identify, on a county-by-county basis, when counties are experiencing "Lower Risk," "Moderate Risk," "High Risk," and "Extreme Risk" from COVID-19 (collectively, "Risk Levels").

ii. These Risk Level Metrics shall consider indicators of disease spread, which may include case rates and percent positivity. The Risk Level Metrics may also consider factors such as hospital capacity, public health response and response capacity, and impact on communities disproportionately

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impacted, or such other measures as OHA in its judgment, in consultation with the Governor, may determine best measure a county's Risk Level.

iii. These Risk Level Metrics may be revised from time to time, via the procedure described in paragraph 2 of this Executive Order, and may identify additional Risk Levels beyond the four identified above.

b. Determining counties' Risk Level.

i. OHA is directed to regularly determine and publish which Risk Level each county falls into, based on the Risk Level Metrics, so counties, and the businesses, individuals, and other entities within those counties, may identify which Risk Level they fall into, and what restrictions apply, at any given time.

ii. OHA's methodology for periodically determining and publishing which Risk Level a county falls into may use a "waiting period" before moving counties up or down a Risk Level, to confirm that changing case rates or test positivity are a stable trend, rather than an anomaly.

iii. A county may request to stay at a higher Risk Level on the Risk Level Metrics, even when eligible to move to a lower Risk Level.

iv. A county's current Risk Level is as determined by OHA for purposes of this Executive Order and guidance issued under the authority of this Executive Order.

4. **Sector Guidance**. Using the procedure described in paragraph 2 of this Executive Order, OHA is directed to do the following:

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a. Content of sector guidance.

i. OHA is directed to issue guidance that defines and sets safety measures, operational limitations, and capacity limits for different sectors of the economy, to control the spread and risk from COVID-19. Operational limitations may include, but are not limited to, closure of certain activities.

ii. These safety measures, operational limitations, and capacity limits may be tied to, implemented by reference to, and depend on, the Risk Level Metrics and county Risk Levels described in paragraph 3, above. That is, where Risk Levels are higher, safety measures, capacity limits or operational limitations may be more restrictive.

iii. In issuing the guidance that defines and sets these safety measures, operational limitations, and capacity limits, OHA shall generally be guided by science and data regarding risk, including but not limited to the general principles for fighting the virus that OHA has identified, or may identify in the future, including but not limited to:

1. That outdoor activity is safer than indoor activity;

2. That good ventilation is better than poor ventilation;

3. That always wearing masks when around others outside your household protects you and those around you;

4. That keeping at least six feet from others outside your household helps prevent the spread of the disease;

5. That we should limit the number of people we have contact with—within six feet and in the same space;

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6. That we should limit the density indoors and in confined outdoor spaces or those with shared indoor facilities;

7. That we should limit the amount of time you are with others outside your household; and

8. That we may need additional measures to protect those who are most vulnerable.

b. **Enumeration of sectors.** I direct OHA to issue sector guidance defining, and setting safety measures, operational limitations, and capacity limits, for the following sectors or categories of activities:

i. Eating and drinking establishments.

ii. Indoor Recreation and Fitness Establishments, including but not limited to indoor gyms, indoor fitness organizations, indoor recreational sports, indoor pools, indoor K-12 sports, indoor collegiate sports, indoor personal training, and indoor dance.

iii. Indoor Entertainment Establishments, including but not limited to aquariums, indoor theaters/arenas/concert halls, indoor gardens, indoor museums, indoor entertainment activities of any kind, and indoor event spaces.

iv. Retail Establishments, including but not limited to farmers' markets, grocery stores, warehouse clubs, wholesale clubs, convenience stores and pharmacies.

v. Indoor and Outdoor Shopping Centers/Malls.

vi. Faith Institutions, Funeral Homes, Mortuaries, and Cemeteries.

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vii. Outdoor Recreation and Fitness Establishments, including but not limited to outdoor gyms, outdoor fitness organizations, outdoor recreational sports, outdoor pools, outdoor parks and hiking trails, outdoor campsites, outdoor K-12 sports, outdoor collegiate sports, outdoor personal training, and outdoor dance.

viii. Outdoor Entertainment Establishments, including but not limited to zoos, outdoor gardens, outdoor aquariums, outdoor theaters, outdoor stadiums, outdoor event spaces, outdoor arenas, outdoor concert halls, and outdoor entertainment activities of any kind.

ix. Youth programs, including but not limited to camps and programs operated by a political subdivision of the state or governmental agency that would otherwise be exempt from licensure.

x. Personal Services, including but not limited to barber shops, hair salons, esthetician practices, medical spas, facial spas and day spas, non-medical massage therapy services, nail salons, tanning salons, and tattoo/piercing parlors.

xi. Drive-in operations, including but not limited to drive-in movie theatres and viewing experiences from a personal vehicle.

xii. Other sectors or categories of activities as OHA, in consultation with the Governor, may determine require sector-specific guidance.

c. **Compliance with OHA Guidance**. Businesses, non-profits, and other sectors must at all times be aware of the Risk Level in the counties where they operate and comply with the requirements applicable to those Risk Levels established in OHA guidance.

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d. **Sectors without specific prohibitions** may operate, provided they comply with any applicable OHA guidance, including but not limited to applicable sector-specific guidance, the guidance for employers, and the face coverings guidance.

5. **Individual Guidance**. Using the procedure described in paragraph 2 of this Executive Order, as part of or in addition to the sector guidance referenced in paragraph 4 of this Executive Order, OHA may from time to time issue or amend guidance establishing general requirements that individual Oregonians must comply with regardless of setting to control the spread and risk from COVID-19. This individual guidance may be tied to, implemented by reference to, and depend on, the Risk Level Metrics described in paragraph 3 of this Executive Order. Areas where OHA may, with the approval of the Governor, issue individual guidance include, but are not limited to:

   a. Requirements regarding face coverings;

   b. Requirements regarding physical distancing;

   c. Limitations and safety requirements for social and at-home gatherings;

   d. Limitations on indoor or outdoor activities not otherwise categorized;

   e. Limitations and safety requirements for travel; and

   f. Requirements regarding COVID-19 related isolation and quarantine.

6. **Workplaces with offices in Oregon**. While COVID-19 is spreading in a community, telework, when it is possible, helps to protect a business' employees and their families and other close contacts, and also helps to protect others who are unable to telework, by helping to keep community spread lower. Although utilizing telework options to the extent possible is recommended in all Risk Levels during this pandemic, requirements around telework will vary based on the Risk Level where the county is located.

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Namely, all businesses and nonprofit entities with offices in Oregon, except those expressly exempted in paragraph 8, below, must comply with the following:

a. When a county is at Extreme Risk: All businesses and non-profit entities with offices in that county 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 a county is at High or Moderate Risk: All businesses and non-profit entities with offices in that county are strongly recommended to facilitate telework and work-at-home by employees, to the maximum extent possible. It is strongly recommended that work in offices be avoided whenever telework and work-at-home options are available, in light of position duties, availability of teleworking equipment, and network adequacy.

c. When a county is at Lower Risk: Businesses and non-profit entities with offices in that county may make limited return to work available. Businesses and non-profits are encouraged to consider continuing to make telework and work-at-home options are available.

d. For all Risk Levels: Businesses and non-profit entities with offices in Oregon must comply with any applicable OHA guidance, including but not limited to applicable sector-specific guidance, the guidance for employers, and the face coverings guidance.

7. **Recommendations**.

a. Remote, drive-through, and outdoor options encouraged. For all activities allowed 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,

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delivery and outdoor options, or canceling or postponing the activity.

b. OHA recommendations. In addition to the mandatory OHA guidance described in this Executive Order, OHA may, from time to time, issue or amend non-mandatory recommendations or advisories. Such recommendations may be included in OHA guidance, or may be issued separately, but in either case will be clearly designated as recommendations, rather than requirements.

8. **Exceptions**. The settings listed below are, to the extent stated below, exempt from the requirements of this Executive Order.

a. Higher education, K-12 schools, childcare. 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 shall continue to comply with 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 comply with Executive Order 20-29, including as extended or modified by further Executive Orders, and any guidance from the Department of Education or OHA. Settings governed by the Executive Orders listed above in this subparagraph 8(a) are exempt from the requirements of this Executive Order.

b. State executive branch buildings and operations. I delegate to the Director of the Department of Administrative Services (DAS) the authority to issue, and from time to time revise, binding guidance to help control the spread of COVID-19 in state executive branch buildings and operations. That guidance is enforceable to the same extent this Executive Order is enforceable. State executive branch buildings and operations are otherwise exempt from the requirements of this Executive Order, provided they are operating in compliance with the DAS guidance.

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c. Local governments. Local government buildings and operations are exempt from the requirements of Paragraph 6 of this executive order (workplaces with offices in Oregon), but must otherwise comply with any applicable requirements of this Executive Order, the Risk Level Metrics, and OHA guidance issued under the authority of this Executive Order.

d. Judicial branch, legislative branch, federal government, and tribal governments. This Executive Order, and any guidance issued under the authority of this Executive Order, does not apply to offices and buildings owned or occupied by the state legislative and judicial branches, federal government, and tribal governments, or to the governmental operations of those entities. It is my hope and expectation that these entities will continue to maintain, or adopt, evidence-based rules or guidance to govern their own buildings and operations that control the spread of COVID-19 in those settings.

e. Licensed health care facilities and licensed residential facilities. Health care facilities and residential facilities licensed by OHA and DHS must continue to comply with licensing requirements and applicable DHS and OHA guidance. Provided that they are in compliance with licensing requirements and applicable guidance, however, these entities are exempt from the other requirements of this Executive Order.

f. Shelters and emergency response. Emergency response activities, shelter and meal programs serving vulnerable populations, and encampments of people experiencing homelessness must comply with applicable OHA guidance specifically for shelters and emergency response activities. Provided that they are in compliance with that guidance, emergency response activities, shelter and meal programs serving vulnerable populations, and encampments of people experiencing homelessness are exempt from the other requirements of this Executive Order.

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g. Certain employer-provided housing. Settings covered by Executive Order 20-58 shall continue to comply with that Executive Order so long as it is in effect, and are exempt from the requirements of this Executive Order.

9. **Legal Effect**. This Executive Order is issued under the authority conferred to the Governor by ORS 401.165 to 401.236 and ORS 401.035. 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.

10. **Enforcement**.

a. This Executive Order, the Risk Level Metrics, 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, the Risk Level Metrics, 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 up to 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, under existing civil and administrative enforcement

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authorities, the directives in this Executive Order, the Risk Level Metrics, and any guidance issued by OHA or other state agencies to implement this Executive Order.

d. I direct the Superintendent of the Oregon State Police to coordinate with law enforcement agencies throughout the state to enforce the directives of this Executive Order, the Risk Level Metrics, or any guidance issued by OHA or other state agencies to implement 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, the Risk Level Metrics, or any guidance issued by OHA or other state agencies to implement this Executive Order, may be closed until they demonstrate compliance.

11. **Severability**. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this Executive Order, or any guidance issued under the authority 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 or guidance issued under the authority of this Executive Order.

12. **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.

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13. **Effective Date**. This Executive Order is effective December 3, 2020 at 12:01 a.m., and remains in effect until terminated by the Governor.

Done at Salem, Oregon, this 2nd day of December, 2020.

Kate Brown

Kate Brown
GOVERNOR

ATTEST:

Bev Clarno

Bev Clarno
SECRETARY OF STATE

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