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CHARLES D. BAKER
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LIEUTENANT GOVERNOR

ORDER REQUIRING EARLY CLOSING FOR CERTAIN BUSINESSES AND ACTIVITIES, LIMITING HOURS FOR ALCOHOL AND ADULT USE CANNABIS SALES, AND MODIFYING CHAPTER 138 LICENSE RENEWAL REQUIREMENTS

COVID-19 Order No. 53

WHEREAS, on March 10, 2020, I, Charles D. Baker, Governor of the Commonwealth of Massachusetts, acting pursuant to the powers provided by Chapter 639 of the Acts of 1950 and Section 2A of Chapter 17 of the General Laws, declared that there now exists in the Commonwealth of Massachusetts a state of emergency due to the outbreak of the 2019 novel Coronavirus ("COVID-19");

WHEREAS, on March 11, 2020, the COVID-19 outbreak was characterized as a pandemic by the World Health Organization;

WHEREAS, the Federal Centers for Disease Control and Prevention ("CDC") have advised that COVID-19 is spread mainly by person-to-person contact and that the best means of slowing the spread of the virus is through practicing social distancing and by minimizing personal contact with large groups and with environments where this potentially deadly virus may be transmitted including, in particular, spaces that present enhanced risks because of large number of persons present or passing through who may spread the virus through respiratory activity or surface contacts;

WHEREAS, on March 23, 2020, in order to restrict all non-essential person-to-person contact and movement outside the home and reduce opportunities for spreading the COVID-19 virus within the Commonwealth, I issued COVID-19 Order No. 13, which temporarily closed the brick-and-mortar premises of businesses and organizations that do not provide COVID-19 Essential Services;

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WHEREAS, in response to gradual improvements in the public health data, commencing with COVID-19 Order No. 33 issued on May 18, 2020 and continuing through COVID-19 Order No. 51 issued on September 29, 2020, I issued a series of executive orders that designated certain businesses and other organizations as Phase I, II, III, or IV enterprises and initiated a progressive, phased plan for re-opening workplaces and other facilities across the Commonwealth;

WHEREAS, the CDC, the Department of Public Health, and other public health authorities continue to improve their understanding of how COVID-19 is spread, where the risk of spread is greatest, and how best to mitigate the risk of transmission, all of which permits periodic adjustments to safety measures;

WHEREAS, the Commonwealth has seen an increase in cases since its lowest point in July, and there has been a steep increase in cases during the month of October. On September 26, the 7-day daily average of new confirmed cases was 385, whereas as of October 31, the 7-day daily average of new confirmed cases was 1,214;

WHEREAS, the Commonwealth's COVID-19-related hospitalizations and COVID-19 Intensive Care Unit (ICU) census have more than doubled over the past 2 months. On August 31, the number of individuals in the hospital with a confirmed or suspected case of COVID-19 was 290, whereas on November 1, the number of individuals in the hospital with a confirmed or suspected case of COVID-19 was 613. The COVID-19 ICU census was 47 on September 9, whereas on November 1, the COVID-19 ICU census was 113, with 55 individuals intubated. As of November 1, 67% of hospital beds were full, and during the month of October a number of hospitals reported using surge capacity;

WHEREAS, the public health data indicate that informal social activity is contributing to the rise in cases, as evidenced by the fact that household transmission and social gatherings represent 88% of all new and ongoing COVID-19 clusters identified as of September 27;

WHEREAS, left unchecked, the current COVID-19 case growth poses a risk to the Commonwealth's healthcare system, and intervention is warranted to moderate case growth and preserve hospital capacity;

WHEREAS, the Department of Public Health has today issued a Stay at Home Advisory that urges all persons in the Commonwealth to remain at home between the hours of 10:00 PM and 5:00 AM in order to slow the spread of the virus, preserve hospital capacity, and save lives;

WHEREAS, certain establishments that hold licenses issued pursuant to section 12 of chapter 138 of the General Laws (a "section 12 license") authorizing the sale of alcoholic beverages for on-premises consumption remain closed to the public because of business disruptions caused by COVID-19, and certain others are not permitted to open to the public until Phase IV of the Commonwealth's Re-Opening Plan; and

WHEREAS, sections 7, 8, and 8A of Chapter 639 of the Acts of 1950 authorize the Governor, during the effective period of a declared emergency, to exercise any and all authority over persons and property necessary or expedient for meeting the state of emergency, including but not limited to authority over public assemblages in order to protect the health and safety of persons, regulating the sale of articles of food and household articles, variance of the terms and conditions of licenses, permits or certificates of registration issued by the Commonwealth or any of its agencies or political subdivisions, and regulation of the business of insurance and protection of the interests of the holders of insurance policies and contracts and of beneficiaries thereunder and of the interest of the public in connection therewith;

NOW, THEREFORE, I hereby Order the following: Sections 1& 2 of Order #53 rescinded by Order #62 effective January 25, 2021

~~1. Mandatory Night-Time Closing Period for Certain Businesses and Activities~~

~~Effective at 12:01 AM on November 6, 2020, all businesses, facilities, or activities included within the categories listed below must close their premises to the public each day not later than 9:30 PM and may not re-open their premises to the public before 5:00 AM the following day (the "mandatory closing period"). Except as otherwise specifically permitted below, during the daily mandatory closing period, businesses, facilities, or activities within the categories listed below may not admit customers, patrons, or members of the public to their premises or otherwise offer, provide, or permit in-person, on-premises services or activities. Operators of affected businesses, facilities, or activities may keep their premises open to employees and other workers during the mandatory closing period and otherwise conduct business activities and operations that do not involve admitting customers, patrons, or members of the public to their premises.~~

~~Businesses, facilities, and activities subject to the daily mandatory closing period:~~

1. ~~Restaurants, provided however that restaurants may offer food and non-alcoholic beverages for take-out and by delivery during the mandatory closing period~~
2. ~~Arcades and Other Indoor and Outdoor Recreation~~
3. ~~Indoor and Outdoor Events~~
4. ~~Indoor and Outdoor Theaters, Movie Theaters, and Performance Venues~~
5. ~~Drive-In Movie Theaters~~
6. ~~Youth and Adult Amateur Sports Activities~~
7. ~~Golf Facilities~~
8. ~~Recreational Boating and Boating Businesses~~
9. ~~Outdoor Recreational Experiences and Educational Activities~~
10. ~~Casinos, Horse Racing Tracks, and Simulcast Facilities~~
11. ~~Driving and Flight Schools~~
12. ~~Zoos, Botanical Gardens, Wildlife Reserves, and Nature Centers~~
13. ~~Close Contact Personal Services~~
14. ~~Fitness Centers and Health Clubs~~
15. ~~Indoor and Outdoor Pools (Public and Semi-Public Swimming Pools)~~

16. Museums/Cultural & Historical Facilities/Guided Tours

Categories of businesses, facilities, and activities listed above correspond to enterprise sectors established in Exhibit A to COVID-19 Order No. 51 and further defined in Sector-Specific COVID-19 Safety Rules and related guidance documents and protocols issued and administered by the Department of Public Health, the Department of Labor Standards, the Executive Office of Energy and Environmental Affairs, and the Massachusetts Gaming Commission. Those agencies are each authorized and directed to amend all relevant rules, guidance documents, and protocols to incorporate the mandatory closing period requirement.

2. Restriction on Service and Sale of Alcohol and Adult-Use Cannabis During Mandatory Closing Period

Effective at 12:01 AM on November 6, 2020, the following restrictions shall apply to the service and sale of alcohol and the sale of adult-use cannabis:

Service and Sale of Alcohol. During the daily mandatory closing period established in Section 1, no person, business, organization, establishment, premises, or service holding or operating under a license issued pursuant to Chapter 138 or Chapter 23K of the General Laws may sell or serve or provide alcohol of any kind to any person anywhere in the Commonwealth. This restriction applies, without limitation, to all retailers, restaurants, private clubs, catering halls, events, and delivery services licensed to offer alcohol service or retail sale pursuant to Chapter 138 or, in the case of casinos, Chapter 23K.

This restriction shall not displace any provisions of Chapter 138 or Chapter 23K or of any license issued under those authorities that may establish more restrictive limitations on the hours during which a licensee may offer sale or service or provision of alcohol each day.

Retail Sale of Adult-Use Cannabis. During the daily mandatory closing period established in Section 1, no individual, business, organization, establishment, premises, or entity holding or operating under a marijuana retailer license issued pursuant to Chapter 94G of the General Laws may sell adult-use cannabis or adult-use cannabis products of any kind to any person anywhere in the Commonwealth.

For violations of the restrictions established in this Section, each individual sale or delivery or service made during the mandatory closing period may be treated as a separate violation for purposes of administering fines and other penalties.

3. Renewal of Chapter 138 Licenses by Establishments Remaining Closed During the State of Emergency

Notwithstanding anything to the contrary in section 12 of Chapter 138 of the General Laws, the holder of a section 12 license that remains closed to the public during the state of

emergency shall be permitted to renew its section 12 license for 2021 pursuant to section 16A of the same chapter with the benefit of the following allowances:

a. A licensee shall not be required to submit proof of having liquor liability insurance, provided, however, that no licensee that has renewed its license under this allowance may re-open to the public without first submitting to the licensing authority proof of a current liquor liability insurance policy that names the licensee as the insured and that otherwise meets the requirements of section 12. No insurer, broker, agent, or their representative shall impose or collect any surcharge penalty, fee, or other charge in addition to the premium for any liquor liability insurance policy obtained under the terms of this allowance; and

b. A licensee shall not be required to submit proof of having a workers' compensation insurance policy, provided, however, that (1) no licensee that has renewed its license under this allowance shall have any payroll at the time of renewal; and (2) no licensee that has renewed its license under this allowance shall commence operations that involve employees or re-open to the public without first providing satisfactory proof of workers' compensation insurance as required by a municipal licensing authority. No insurer, broker, agent, or their representative shall impose or collect any surcharge penalty, fee, or other charge in addition to the premium for any such workers' compensation insurance policy obtained under the terms of this allowance.

A rescission of this Order or a termination of the state of emergency shall not invalidate any section 12 license that was renewed pursuant to this Section during the period in which this Order was in effect.

4. Enforcement Provisions

The Department of Public Health, the Department of Labor Standards, local boards of health and their authorized agents pursuant to G. L. c. 111, § 30, and State and municipal police are authorized to enforce this Order. Violation of the restrictions adopted in Sections 1 or 2 of this Order may result in a civil fine of up to $500 per violation as provided in St. 1950, c. 639, § 8, provided that any fine shall be administered in the manner provided for the non-criminal disposition of violations of municipal by-law, ordinance, rule, or regulation pursuant to G. L. c. 40, § 21D. Each individual instance of non-compliance and each day of a continuing violation may be fined as a separate violation.

This Order may also be enforced by injunction. A motion for an injunction to enforce this Order may be filed in the district court or any other court of competent jurisdiction for the municipality in which the violation has been charged.

The Alcoholic Beverages Control Commission or a local licensing authority may, after notice to the licensee and a reasonable opportunity to be heard, suspend, revoke, or cancel a license for the sale or service of alcoholic beverages or take other appropriate enforcement action

upon satisfactory proof that the licensee has violated or permitted a violation of Section 1 or 2 of this Order.

If any provision of this Order or the application thereof to any person, entity, or circumstance is determined to be invalid by a court of competent jurisdiction, such determination shall not affect or impair the validity of the other provisions of this Order or its application to other persons, entities, and circumstances.

Sections 1 and 2 of this Order are effective at 12:01 AM on November 6, 2020, and Section 3 is effectively immediately. This Order shall remain in effect until rescinded or until the state of emergency is ended, whichever occurs first.

Given in Boston at 1:60 AM/PM this 2nd day of November, two thousand and twenty

CHARLES D. BAKER
GOVERNOR
Commonwealth of Massachusetts