State of South Carolina

Executive Department

Office of the Governor

EXECUTIVE ORDER NO. 2020-45

WHEREAS, the State of South Carolina must continue to take all necessary and appropriate actions in coping with and mitigating the evolving and expanding public health threat and other impacts associated with the 2019 Novel Coronavirus ("COVID-19"), and in doing so, the State must remain focused on implementing and imposing targeted and narrowly tailored emergency measures and restrictions designed to limit community spread and transmission of COVID-19 and to mitigate the resulting strain on healthcare facilities and resources; and

WHEREAS, on March 13, 2020, the undersigned issued Executive Order No. 2020-08, declaring a State of Emergency based on a determination that COVID-19 posed an imminent public health emergency for the State of South Carolina; and

WHEREAS, on March 13, 2020, the President of the United States declared the ongoing COVID-19 outbreak a pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, tribes, territories, and the District of Columbia, pursuant to Section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5207 ("Stafford Act"); and

WHEREAS, on March 13, 2020, the President of the United States also declared that the COVID-19 pandemic in the United States constitutes a national emergency, pursuant to Sections 201 and 301 of the National Emergencies Act, 50 U.S.C. §§ 1601 *et seq.*, and consistent with Section 1135 of the Social Security Act, 42 U.S.C. § 1320b-5, as amended, retroactive to March 1, 2020; and

WHEREAS, in addition to declaring an initial State of Emergency on March 13, 2020, the undersigned has issued various Executive Orders initiating, directing, and modifying further extraordinary measures designed to address the significant public health, economic, and other impacts associated with COVID-19 and to mitigate the resulting burdens on healthcare providers, individuals, and businesses in the State of South Carolina, certain provisions of which have been extended by subsequent and distinct emergency declarations set forth in Executive Order Nos. 2020-15, 2020-23, 2020-29, 2020-35, 2020-38, 2020-40, 2020-42, and 2020-44; and

WHEREAS, on March 16, 2020, based on updated information and recommendations from the Centers for Disease Control and Prevention ("CDC"), the President of the United States

and the White House Coronavirus Task Force issued new guidance—titled, "The President's Coronavirus Guidelines for America: 15 Days to Slow the Spread of Coronavirus (COVID-19)"—to help protect Americans during the global COVID-19 outbreak; and

WHEREAS, the President's Coronavirus Guidelines for America recommend, *inter alia*, that the American people "[w]ork or engage in schooling from home whenever possible"; "[a]void social gatherings in groups of more than 10 people"; "[a]void eating or drinking at bars, restaurants, and food courts—use drive-thru, pickup, or delivery options"; and "[a]void discretionary travel, shopping trips, and social visits"; and

WHEREAS, on March 29, 2020, the President of the United States extended and expanded the provisions of his Coronavirus Guidelines for America until April 30, 2020, based on the ongoing nature and evolving scope of the global COVID-19 pandemic; and

WHEREAS, on March 31, 2020, the undersigned issued Executive Order No. 2020-17, directing that certain "non-essential" businesses, venues, facilities, services, and activities in the following categories be closed to non-employees and the public, effective Wednesday, April 1, 2020, at 5:00 p.m.: entertainment venues and facilities, recreational and athletic facilities and activities, and close-contact service providers; and

WHEREAS, on April 3, 2020, the undersigned issued Executive Order No. 2020-18, superseding the provisions of Executive Order No. 2020-17 and directing that certain additional "non-essential" businesses, venues, facilities, services, and activities in the general category of retail stores also be closed to non-employees and the public, effective Monday, April 6, 2020, at 5:00 p.m.; and

WHEREAS, on April 6, 2020, the undersigned issued Executive Order No. 2020-21, directing, *inter alia*, that effective Tuesday, April 7, 2020, at 5:00 p.m., any and all residents and visitors of the State of South Carolina are required to limit social interaction, practice "social distancing" in accordance with CDC guidance, and take every possible precaution to avoid potential exposure to, and to slow the spread of, COVID-19, and shall limit their movements outside of their Residence, except for purposes of engaging in Essential Business, Essential Activities, or Critical Infrastructure Operations, as such terms are further defined therein; and

WHEREAS, on April 16, 2020, the President of the United States issued new Guidelines on Opening Up America Again, which contemplate individual States reopening in phases using a deliberate, data-driven approach tailored to address the situation in each State; and

WHEREAS, on April 20, 2020, based on the latest data from the South Carolina Department of Health and Environmental Control ("DHEC"), the undersigned issued Executive Order No. 2020-28, amending, *inter alia*, certain provisions of Executive Order Nos. 2020-18 and 2020-21, as extended by Executive Order No. 2020-23, to initiate certain modifications to prior "non-essential" business closures—specifically, "retail stores," as identified therein by general description—so as to begin the process of safely, strategically, and incrementally reopening businesses and facilitating economic recovery and revitalization; and

WHEREAS, on May 3, 2020, the undersigned issued Executive Order No. 2020-31, modifying Section 1 of Executive Order No. 2020-21 (Home or Work Order), as well as amending

the provisions of Section 4 of Executive Order No. 2020-10, as extended by Executive Order No. 2020-29, so as to authorize restaurants to provide outdoor customer dining services, effective Monday, May 4, 2020, at 12:01 a.m., in addition to previously authorized services for off-premises consumption; and

WHEREAS, on May 8, 2020, the undersigned issued Executive Order No. 2020-34, modifying and amending certain prior Orders so as to authorize restaurants to provide services for limited indoor, on-premises customer dining, effective Monday, May 11, 2020, at 12:01 a.m., in addition to previously authorized services for off-premises consumption and outdoor customer dining, as well as rescinding those restrictions previously imposed on boating activities; and

WHEREAS, on May 15, 2020, upon consultation with, *inter alia*, various state and federal agencies, officials, and experts, the undersigned issued Executive Order No. 2020-36, amending certain prior Orders so as to initiate additional modifications to prior "non-essential" business closures—namely, "close-contact service providers" and specific "recreational and athletic facilities and activities," as identified by general description and further defined therein—and continue the process of safely, strategically, and incrementally reopening businesses and facilitating economic recovery and revitalization; and

WHEREAS, on May 21, 2020, upon further consultation with, *inter alia*, various state and federal agencies, officials, and experts, the undersigned issued Executive Order No. 2020-37, amending prior Orders so as to initiate additional modifications to prior "non-essential" business closures—namely, certain categories of entertainment venues and facilities and recreational and athletic facilities and activities, as identified by general description and further defined therein—as part of the ongoing process of safely, strategically, and incrementally reopening businesses and facilitating economic recovery and revitalization; and

WHEREAS, although the aforementioned and other emergency measures have helped limit and slow the spread of COVID-19, the COVID-19 pandemic represents an ongoing and evolving public health threat, which requires that the State of South Carolina continue to take all necessary and appropriate actions in proactively preparing for and promptly responding to the current public health emergency and mitigating the resulting burdens on healthcare facilities and resources; and

WHEREAS, as of July 11, 2020, DHEC has identified at least 54,538 confirmed cases of COVID-19 in the State of South Carolina, including 940 deaths due to COVID-19; and

WHEREAS, DHEC announced 2,239 new positive cases of COVID-19 on July 11, 2020, which represents the highest number of positive cases of COVID-19 reported in a single day, as well as the State's first pediatric death associated with COVID-19; and

WHEREAS, over the past several weeks, the State has significantly increased the availability of, and access to, COVID-19 testing, and although the expansion of testing capability and capacity was expected to produce higher daily numbers of confirmed cases of COVID-19, DHEC has also noted substantial increases in the rate or percentage of positive test results, as well as the number of hospital beds occupied by patients who have either tested positive or are under investigation for COVID-19; and

WHEREAS, according to DHEC data, younger South Carolinians continue to account for a substantial portion of positive cases of COVID-19, and since June 1, 2020, there has been a 436.5% increase in newly reported COVID-19 cases among the 21–30 age group, representing 22% of the total confirmed cases of COVID-19 in the State, which is the largest percentage of positive cases by age group; and

WHEREAS, based on the latest data and developments, and after conferring with various state and federal public health agencies, officials, and experts regarding ongoing testing and tracing initiatives and the results thereof, the undersigned is informed that late-night congregate settings in restaurants, bars, and other establishments have been identified as sources of, or contributing factors to, substantial community spread and transmission of COVID-19; and

WHEREAS, in view of the foregoing, and in an effort to provide for and protect the health and welfare of the people of this State, the undersigned has determined that it is necessary and appropriate to implement and impose certain temporary, targeted, and narrowly tailored emergency measures and restrictions designed to limit community spread and transmission of COVID-19 and to mitigate the resulting strain on healthcare resources, while also hopefully avoiding the need to resort to more restrictive means of addressing the same; and

WHEREAS, contemporaneously herewith, the undersigned issued Executive Order No. 2020-44, declaring an additional, distinct State of Emergency—based on new facts, changing conditions, and the previously unforeseen occurrence of a combination of extraordinary circumstances, including the aforementioned data and developments related to COVID-19—and implementing additional extraordinary measures to address the same, while also extending provisions of certain prior Orders for the duration of the State of Emergency, unless otherwise modified, amended, or rescinded; and

WHEREAS, section 1-3-430 of the South Carolina Code of Laws, as amended, provides that when a state of emergency has been declared, the undersigned "may further, cope with such threats and danger, order and direct any person or group of persons to do any act which would in his opinion prevent or minimize danger to life, limb or property, or prevent a breach of the peace; and he may order any person or group of persons to refrain from doing any act or thing which would, in his opinion, endanger life, limb or property, or cause, or tend to cause, a breach of the peace, or endanger the peace and good order of the State or any section or community thereof, and he shall have full power by use of all appropriate available means to enforce such order or proclamation"; and

WHEREAS, pursuant to section 1-3-460 of the South Carolina Code of Laws, as amended, the foregoing and other emergency authority is "supplemental to and in aid of powers now vested in the Governor under the Constitution, statutory laws[,] and police powers of the State"; and

WHEREAS, in accordance with section 25-1-440 of the South Carolina Code of Laws, as amended, when an emergency has been declared, the undersigned is "responsible for the safety, security, and welfare of the State and is empowered with [certain] additional authority to adequately discharge this responsibility," to include issuing, amending, and rescinding "emergency proclamations and regulations," which shall "have the force and effect of law as long as the emergency exists"; and

WHEREAS, in addition to the foregoing, section 25-1-440 of the South Carolina Code of Laws, authorizes the undersigned, during a declared emergency, to "transfer the direction, personnel, or functions of state departments, agencies, and commissions, or units thereof, for purposes of facilitating or performing emergency services as necessary or desirable," and to "compel performance by elected and appointed state, county, and municipal officials and employees of the emergency duties and functions assigned them in the State Emergency Plan or by Executive Order"; and

WHEREAS, the undersigned is further authorized, pursuant to section 25-1-440 of the South Carolina Code of Laws, to "direct and compel evacuation of all or part of the populace from any stricken or threatened area if this action is considered necessary for the preservation of life or other emergency mitigation, response, or recovery; to prescribe routes, modes of transportation, and destination in connection with evacuation; and to control ingress and egress at an emergency area, the movement of persons within the area, and the occupancy of premises therein"; and

WHEREAS, in accordance with section 16-7-10(A) of the South Carolina Code of Laws, as amended, "[i]n any area designated by the Governor in his proclamation that a state of emergency exists, and during the duration of the proclamation, it is unlawful for a person to: violate a provision in the proclamation including, but not limited to, any curfew set forth by the proclamation; congregate, unless authorized or in their homes, in groups of three or more and to refuse to disperse upon order of a law enforcement officer; or wilfully fail or refuse to comply with any lawful order or direction of any law enforcement officer"; and

WHEREAS, in addition to the foregoing authorities, pursuant to section 61-6-4160 of the South Carolina Code of Laws, as amended, "[i]t is unlawful to sell alcoholic liquors . . . during periods proclaimed by the Governor in the interest of law and order or public morals and decorum" and "[f]ull authority to proclaim these periods is conferred upon the Governor in addition to all his other powers"; and

WHEREAS, section 61-6-4160 of the South Carolina Code of Laws further provides that "[a] person who violates a provision of this section is guilty of a misdemeanor and, upon conviction, must be punished as follows: (a) for a first offense, by a fine of two hundred dollars or imprisonment for sixty days; (b) for a second offense, by a fine of one thousand dollars or imprisonment for one year; and (c) for a third or subsequent offense, by a fine of two thousand dollars or imprisonment for two years"; and

WHEREAS, the Attorney General has previously opined that "[t]he obvious intent of [section 61-6-4160's predecessor statute] is to afford the Governor the right to order the sale of alcoholic liquors to be discontinued during temporary periods of emergency" and that "[i]t is clear that [the Governor] ha[s] the authority . . . to order that the sale of liquors be prohibited at such places in the State in which, in [his] judgement, the interest of law and order and public morals and decorum, require such action," 1968 WL 13075, at *1 (S.C.A.G. Apr. 27, 1968); and

WHEREAS, it is axiomatic that "[t]he health, welfare, and safety of the lives and property of the people are beyond question matters of public concern, and reasonable regulations and laws designed to preserve and protect the same are clearly contained in the police power inherent in the sovereign," 1980 S.C. Op. Att'y Gen. 142, 1980 WL 81975, at *1 (S.C.A.G. Sept. 5, 1980); and

WHEREAS, for the aforementioned and other reasons, and in recognition and furtherance of the undersigned's authority and responsibility to provide for and ensure the health, safety, security, and welfare of the people of the State of South Carolina, the undersigned has determined that the State of South Carolina must take additional proactive action and implement further extraordinary measures designed to slow the spread of COVID-19 and limit the resulting strain on healthcare resources.

NOW, THEREFORE, by virtue of the authority vested in me as Governor of the State of South Carolina and pursuant to the Constitution and Laws of this State and the powers conferred upon me therein, I hereby order and direct as follows:

Section 1. Temporary Restrictions Regarding Alcoholic Beverages at Restaurants, Bars, and Other Establishments After 11:00 p.m.

To address and reduce instances of community spread and transmission of COVID-19 among individuals congregating in restaurants, bars, and other establishments, to mitigate the resulting burdens on healthcare facilities and resources, and to maintain peace and good order during the State of Emergency, pursuant to the aforementioned authorities and other applicable law, as well as the specific provisions set forth below, I hereby determine, order, and direct as follows:

A. For the foregoing reasons, and in accordance with section 61-6-4160 of the South Carolina Code of Laws, I hereby determine and proclaim that it is necessary and appropriate and "in the interest of law and order" and "public morals and decorum" to prohibit the sale of beer, wine, or alcoholic liquor under certain conditions and during certain periods, as set forth below, in connection with the State of Emergency.

B. I hereby order and direct that effective Saturday, July 11, 2020, at 11:00 p.m., the sale or consumption of beer, wine, or alcoholic liquor on the licensed premises of all persons or businesses authorized to sell beer, wine, or alcoholic liquor in the State of South Carolina (collectively, "Licensees"), as set forth below, is prohibited between the hours of 11:00 p.m. and 10:00 a.m. the following day.

C. For purposes of this Section, beer, wine, and alcoholic liquors shall refer to those alcoholic beverages as defined in Chapters 4 and 6 of Title 61 of the South Carolina Code of Laws, as amended. For purposes of this Section, Licensees include only those persons or businesses holding the following permits or licenses issued by the South Carolina Department of Revenue ("DOR") pursuant to Title 61 of the South Carolina Code of Laws:

1. On-Premises Beer and Wine Permits (PBW) or 7-Day On-Premises Beer and Wine Permit (PO7);
2. Instate Winery Permit (PWY), Domestic Winery Permit (PDW), or 7-Day Winery Permit (P7W);
3. Brewpub Beer Permit (PBB);
4. Brewery Permit (PWY);
5. Business Liquor by the Drink License (PLB);
6. Non-Profit Private Club Liquor by the Drink License (PLC); or
7. Special Event Permit or Special Non-Profit Event Permit.

This Order does not limit the hours of sales for beer, wine, or alcoholic liquors for off-premises consumption, which shall continue to be governed by existing law.

D. Pursuant to sections 1-3-430 and 1-3-440 of the South Carolina Code of Laws, the undersigned is authorized to enforce the provisions of this Order "by use of all appropriate available means," to include, *inter alia*, "[o]rder[ing] any and all law enforcement officers of the State or any of its subdivisions to do whatever may be deemed necessary to maintain peace and good order" and "order[ing] or direct[ing] any State, county[,] or city official to enforce the provisions of such proclamation in the courts of the State by injunction, mandamus, or other appropriate legal action."

E. I hereby authorize, order, and direct DOR and the South Carolina Law Enforcement Division ("SLED") to administer the provisions of this Order and enforce compliance with the same as necessary and appropriate. Noncompliance with this Section shall constitute grounds for suspension of a license or permit in accordance with the provisions of Title 61, including but not limited to sections 61-4-580, 61-6-50, and 61-6-100, as amended. Pursuant to the process established in section 1-23-370(c) of the South Carolina Code of Laws, as amended, if DOR "finds that public health, safety[,] or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings." Unless otherwise provided by DOR, any summary suspension under this Section will be effective for at least the duration of this Order and any amendments to or extensions of the same. Notwithstanding the foregoing, this Section does not prevent or prohibit DOR from seeking or imposing additional penalties as authorized by law if warranted by the Licensee's actions. I hereby further order and direct DOR, upon suspension of a license or permit for noncompliance with this Section, to promptly institute proceedings in the Administrative Law Court to review the summary suspension, as required by section 1-23-370(c).

F. In addition to the foregoing authorities, noncompliance with this Section shall be further governed by the provisions of sections 16-7-10(A) and 61-6-4160 of the South Carolina Code of Laws.

G. I hereby authorize DOR and SLED to provide or issue any necessary and appropriate additional or supplemental guidance, rules, regulations, or restrictions regarding the application of this Section or to otherwise provide clarification regarding the same, through appropriate means, without the need for further Orders.

Section 2. Enforcement

A. I hereby authorize any and all law enforcement officers of the State, or any political subdivision thereof, to do whatever may be deemed necessary to maintain peace and good order during the State of Emergency and to enforce the provisions of this Order and any prior or future Orders issued by the undersigned in connection with the present State of Emergency.

B. Pursuant to section 16-7-10(A) of the South Carolina Code of Laws, any individual who "refuse[s] to disperse upon order of a law enforcement officer," "wilfully fail[s] or refuse[s] to comply with any lawful order or direction of any law enforcement officer," or otherwise violates any provision of any Order issued by the undersigned in connection with the State of Emergency

"is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars or imprisoned for not more than thirty days."

C. Pursuant to section 61-6-4160 of the South Carolina Code of Laws, "[a] person who violates a provision of this section is guilty of a misdemeanor and, upon conviction, must be punished as follows: (a) for a first offense, by a fine of two hundred dollars or imprisonment for sixty days; (b) for a second offense, by a fine of one thousand dollars or imprisonment for one year; and (c) for a third or subsequent offense, by a fine of two thousand dollars or imprisonment for two years."

D. In accordance with section 1-3-440(4) of the South Carolina Code of Laws, I further authorize, order, and direct any State, county, or city official to enforce the provisions of this Order and any prior or future Orders issued in connection with the present State of Emergency, as necessary and appropriate, in the courts of the State by injunction, mandamus, or other appropriate legal action.

E. In addition to the foregoing, I further authorize, order, and direct DHEC to exercise and utilize any and all necessary and appropriate emergency powers, as set forth in the Emergency Health Powers Act, codified as amended in Title 44, Chapter 4 of the South Carolina Code of Laws, to implement and enforce the provisions of this Order. In accordance with section 44-4-500 of the South Carolina Code of Laws, as amended, DHEC shall continue to "use every available means to prevent the transmission of infectious disease and to ensure that all cases of infectious disease are subject to proper control and treatment."

Section 3. General Provisions

A. This 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 South Carolina, its agencies, departments, political subdivisions, or other entities, or any officers, employees, or agents thereof, or any other person.

B. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this Order is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this Order, as the undersigned would have issued this Order, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

C. If or to the extent that any political subdivision of this State seeks to adopt or enforce a local ordinance, rule, regulation, or other restriction that conflicts with this Order, this Order shall supersede and preempt any such local ordinance, rule, regulation, or other restriction.

D. This Order is effective immediately and shall remain in effect for the duration of the State of Emergency unless otherwise modified, amended, extended, or rescinded by subsequent Order. Further proclamations, orders, and directives deemed necessary to ensure the fullest possible protection of life and property during this State of Emergency shall be issued orally by

the undersigned and thereafter reduced to writing and published for dissemination within the succeeding 24-hour period.

GIVEN UNDER MY HAND AND THE GREAT SEAL OF THE STATE OF SOUTH CAROLINA, THIS 11th DAY OF JULY, 2020.

HENRY MCMASTER
Governor

ATTEST:

MARK HAMMOND
Secretary of State