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**CHARLES D. BAKER**
GOVERNOR

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# ORDER TEMPORARILY APPLYING FURTHER CAPACITY RESTRICTIONS TO STATEWIDE COVID-19 SAFETY RULES

COVID-19 Order No. 59

Revising Restrictions Otherwise Applicable Pursuant to Orders No. 57 and 58

**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 the large number of persons present or passing through the area 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, on May 18, 2020, June 6, 2020, and July 2, 2020, I issued COVID-19 Orders No. 33, 37, and 43, respectively, which 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, which permits periodic adjustments to safety measures addressing commercial, recreational, and social activities;

**WHEREAS,** on December 8, 2020, in response to sustained increases across the Commonwealth over the prior 30 days in the number of new daily confirmed cases of COVID-19 and in positive testing rates and a corresponding rise in hospitalizations following the Thanksgiving holiday, I issued COVID-19 Order Nos. 57 and 58, which together reduced capacity allowances for gatherings generally, required the adjustment of certain COVID-19 workplace safety rules issued under prior Orders, and closed certain higher-risk enterprises across the Commonwealth;

**WHEREAS,** as of December 22, 2020, the Department of Public Health has reported 314,850 confirmed cases of COVID-19 and the average daily rate of COVID-19 incidence per 100,000 has risen to 65.1;

**WHEREAS,** the Commonwealth has seen a significant increase in its 7-day average of new daily confirmed cases of COVID-19: as of December 17, 2020, the daily average was 4,053 as compared to 1,837 on November 8;

**WHEREAS,** the Commonwealth has likewise seen a significant increase in its 7-day weighted average of positive molecular test rate: as of December 17, 2020, the rate was 6.1% as compared to 2.7% on November 8;

**WHEREAS,** between Thanksgiving and December 21, hospitalizations for COVID-19 in the Commonwealth more than doubled from 986 to 1,991 admissions;

**WHEREAS,** as of December 7, 2020, the Executive Office of Health and Human Services has moved all regions in Massachusetts to the Tier 3 designation of the Resurgence Planning and Response Framework due to decreasing hospital capacity and increasing community transmission of COVID-19;

**WHEREAS,** this pattern of continuing COVID-19 case growth in the Commonwealth, if left unchecked, poses an increasing risk to the Commonwealth's healthcare system, and enhanced intervention to suppress the continuing transmission of the virus is therefore necessary to moderate case growth and preserve hospital capacity; 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 assemblages in order to protect the health and safety of persons, transportation and travel by any means or mode, regulating the sale of articles of food and household articles, variance of the terms and conditions of licenses and permits issued by the Commonwealth or any of its agencies or political subdivisions, and policing, protection, and preservation of public and private property;

**NOW, THEREFORE,** I hereby Order the following:

Temporary Statewide Reduction of Capacity Limitations and Associated Rules

Effective at 12:01 am on December 26, 2020 and continuing for the period in which this Order remains in effect, the State-wide capacity limitations for gatherings and events set in COVID-19 Order No. 57 and any capacity limitations set in Sector-Specific COVID-19 workplace safety rules issued under the authority of COVID-19 Order No. 58 or prior Orders are hereby superseded and revised as specified for the sectors listed on the table below.

The Department of Labor Standards, the Executive Office of Energy and Environmental Affairs, and any other agency or commission authorized by prior Order to issue COVID-19 workplace safety rules (each a "regulating agency") are hereby directed to provide notice to the public and to enterprises subject to the revised capacity limitations applicable during the period in which this Order remains in effect.

| Sector | Revised Capacity Limits† | Notes |
|---|---|---|
| Gatherings (adjusting Order No. 57) | 10 persons indoors<br>25 persons outdoors | applies to both private homes and event venues and public spaces |
| Restaurants | 25% of seating capacity | (a) workers/staff excluded from occupancy count;<br>(b) applies separately to indoor and outdoor capacity |
| Close Contact Personal Services | 25% | workers/staff excluded from occupancy count |
| Indoor and Outdoor Events | 10 persons indoors<br>25 persons outdoors | workers/staff excluded from occupancy count |
| Theaters and Performance Venues<br>(Indoor performance venues remain closed) | Movie theaters – 25% and maximum 50 people<br>Outdoor performance venues – 25% and maximum 25 people | |
| Casinos | 25% | MGC to re-issue capacity rules as necessary |
| Office Spaces | 25% | |
| Places of Worship | 25% | workers/staff excluded from occupancy count |

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| Retail Businesses | 25% | workers/staff excluded from occupancy count |
| Driving and Flight Schools | 25% | |
| Golf Facilities | 25% | applies only to indoor spaces |
| Libraries | 25% | |
| Operators of Lodgings | 25% | applies only to common areas |
| Arcades & Other Indoor & Outdoor Recreation Businesses | 25% | |
| Fitness Centers and Health Clubs | 25% | |
| Museums / Cultural & Historical Facilities / Guided Tours by vehicles and vessels | 25% | |
| Sectors Not Otherwise Addressed | 25% | |
| Common Areas in facilities subject to EEA-issued COVID-19 safety rules | 25% | applies only to indoor spaces and excludes youth and amateur sports facilities |
| †**General Provision**: Where no licensed or permitted capacity allowance is on record and for any enclosed space within a larger facility, occupancy shall be limited to no more than 5 persons per 1,000 square feet. | | |

Except as otherwise noted, the above references to percentage capacity limits shall apply to a facility's maximum permitted occupancy as documented in its occupancy permit or similar license or permit on record with the municipal building department or other municipal record holder.

Adjustments to the above table will be published where necessary to facilitate practical application of the required capacity limitations.

Except for the specified adjustments to capacity limitations, all other terms of COVID-19 Order No. 57 addressing gatherings generally (including exceptions) and all Sector-Specific COVID-19 workplace safety rules issued by a regulating agency and in effect as of December 26, 2020 shall continue to apply, including minimum spacing and social distancing requirements. Allowances to exceed maximum capacity limitations shall be available as currently provided in COVID-19 workplace safety rules in order to accommodate public health or public safety considerations or where strict compliance may interfere with the continued delivery of critical services.

The capacity limitations specified in this Order shall be enforceable under the terms of COVID-19 Order No. 57 when applied to gatherings subject to that Order and under the terms of Section 2 of COVID-19 Order No. 58 when applied to enterprises regulated pursuant to COVID-19 safety rules issued by a regulating agency. Each person over the specified capacity limitation and each individual instance of non-compliance with the requirements of this Order or any directives, rules, or binding guidance issued pursuant to this Order may be treated as a separate violation.

This Order is effective at 12:01 am on December 26, 2020 and shall remain in effect until 12:00 noon on January 10, 2021 unless further extended.

Given in Boston at 12:40 AM/PM this 22nd day of December, two thousand and twenty

CHARLES D. BAKER
GOVERNOR
Commonwealth of Massachusetts