MICHELLE LUJAN GRISHAM
GOVERNOR

NEW MEXICO DEPARTMENT OF HEALTH

KATHYLEEN M. KUNKEL
CABINET SECRETARY

PUBLIC HEALTH ORDER
NEW MEXICO DEPARTMENT OF HEALTH
CABINET SECRETARY KATHYLEEN M. KUNKEL

MAY 5, 2020

Public Health Emergency Order Clarifying that Current Guidance Documents, Advisories, and Emergency Public Health Orders Remain in Effect; and Amending the March 23, 2020, April 6, 2020, April 11, 2020 and April 30, 2020 Public Health Emergency Orders Closing All Businesses and Non-Profit Entities Except for those Deemed Essential and Providing Additional Restrictions on Mass Gatherings Due to COVID-19

PREFACE

The purpose of this amended Public Health Emergency Order is to further restrict business operations and public gatherings to mitigate the spread of the Novel Coronavirus Disease 2019 ("COVID-19"). We have reached a crucial juncture at which stricter adherence to social distancing and self-isolation measures will be necessary to protect the integrity of our health care system against the potentially devasting effects that could result from a rapid increase in COVID-19 cases in New Mexico. **The bottom line is that all New Mexicans should be staying in their homes for all but the most essential activities and services.** When New Mexicans are not in their homes, they should strictly adhere to social distancing protocols to minimize risks. These sacrifices are the best contribution that each of us can individually make to protect the health and wellbeing of our fellow citizens and the State as a whole. In accordance with these purposes, this Order and its exceptions should be narrowly construed to encourage New Mexicans to stay in their homes for all but the most essential activities.

It is hereby **ORDERED** that:

1. All current guidance documents and advisories issued by the Department of Health remain in effect.

2. The following Public Health Emergency Orders remain in effect through the current Public Health Emergency and any subsequent renewals of that Public Health Emergency or until they are amended of rescinded:

   A. March 13, 2020 Public Health Emergency Order to Temporarily Limit Nursing Home Visitation Due to COVID-19;

   B. April 30, 2020 Public Health Emergency Order Modifying Temporary Restrictions on Non-Essential Health Care Services, Procedures, and Surgeries; and

C. March 24, 2020 Public Health Emergency Order Temporarily Regulating the Sale and Distribution of Personal Protective Equipment Due to Shortages Caused by COVID-19.

3. The April 11, 2020 Public Health Emergency Order Amending the March 23, 2020 and April 6, 2020 Public Health Emergency Orders Closing All Businesses and Non-Profit Entities Except for those Deemed Essential and Providing Additional Restrictions on Mass Gatherings Due to COVID-19 is hereby amended as follows:

ORDER

WHEREAS, on March 11, 2020, because of the spread of the novel Coronavirus Disease 2019 ("COVID-19"), Michelle Lujan Grisham, the Governor of the State of New Mexico, declared that a Public Health Emergency exists in New Mexico under the Public Health Emergency Response Act, and invoked her authority under the All Hazards Emergency Management Act;

WHEREAS, on April 6, 2020, Governor Michelle Lujan Grisham renewed the declaration of a Public Health Emergency until May 1, 2020 due to the continued spread of COVID-19 in New Mexico and on April 30, 2020, she again renewed her declaration of a Public Health Emergency;

WHEREAS, COVID-19 continues to spread in New Mexico and nationally. Since, Executive Order 2020-004 was issued, confirmed COVID-19 infections in New Mexico have risen to more than 3,000 and confirmed cases in the United States have risen to more than 1,000,000;

WHEREAS, the further spread of COVID-19 in the State of New Mexico poses a threat to the health, safety, wellbeing and property of the residents in the State due to, among other things, illness from COVID-19, illness-related absenteeism from employment (particularly among public safety and law enforcement personnel and persons engaged in activities and businesses critical to the economy and infrastructure of the State), potential displacement of persons, and closures of schools or other places of public gathe1ing;

WHEREAS, social distancing is the sole way New Mexicans can minimize the spread of COVID-19 and currently constitutes the most effective means of mitigating the potentially devastating impact of this pandemic in New Mexico; and

WHEREAS, the New Mexico Department of Health possesses legal authority pursuant to the Public Health Act, NMSA 1978, Sections 24-1-1 to -40, the Public Health Emergency Response Act, NMSA 1978, Sections 12-10A-1 to -10, the Department of Health Act, NMSA 1978, Sections 9-7-1 to -18, and inherent constitutional police powers of the New Mexico state government, to preserve and promote public health and safety, to adopt isolation and quarantine, and to close public places and forbid gatherings of people when deemed necessary by the Department for the protection of public health.

NOW, THEREFORE, I, Kathyleen M. Kunkel, Cabinet Secretary of the New Mexico Department of Health, in accordance with the authority vested in me by the Constitution and the Laws of the State of New Mexico, and as directed by the Governor pursuant to the full scope of her emergency powers under the All Hazard Emergency Management Act as invoked through Executive Order 2020-004, do hereby declare the current outbreak of COVID-19 a condition of public health importance as defined in the New Mexico Public Health Act, NMSA 1978, Section 24-1-2(A) as an infection, a disease, a syndrome, a symptom, an injury or other threat that is identifiable on an individual or community level and can reasonably be expected to lead to adverse health effects in the community, and that poses an imminent threat of substantial harm to the population of New Mexico.

The following definitions are adopted for the purposes of this Order:

Definitions: As used in this Public Health Order, the following terms shall have the meaning given to them, except where the context clearly requires otherwise:

(1) "Retail space" means an "essential business" that sells good or services directly to consumers or end-users inside its place of business, such as a grocery store or a hardware stores and includes the "essential businesses" listed in the categories below: 2(d), 2(k), 2(m), 2(n), 2(s), 2(u), and 2(v).

(2) "Essential business" means any business or non-profit entity falling within one or more of the following categories:

a. Health care operations including hospitals, walk-in-care health facilities, veterinary and livestock services, pharmacies, medical wholesale and distribution, home health care workers or aides for the elderly, emergency dental facilities, nursing homes, residential health care facilities, research facilities, congregate care facilities, intermediate care facilities for those with intellectual or developmental disabilities, supportive living homes, home health care providers, and medical supplies and equipment manufacturers and providers;

b. Homeless shelters, food banks, and other services providing care to indigent or needy populations;

c. Childcare facilities necessary to provide services to those workers employed by essential businesses, essential non-profit entities;

d. Grocery stores, supermarkets, food banks, farmers' markets and vendors who sell food, convenience stores, and other businesses that generate the majority of their revenue from the sale of canned food, dry goods, fresh fruits and vegetables, pet food, feed, and other animal supply stores, fresh meats, fish, and poultry, and any other household consumer products;

e. Farms, ranches, and other food cultivation, processing, or packaging operations;

f. All facilities routinely used by law enforcement personnel, first responders, firefighters, emergency management personnel, and dispatch operators;

g. Infrastructure operations including, but not limited to, public works construction, commercial and residential construction and maintenance, airport operations, public transportation, airlines, taxis, private transportation providers, transportation network companies, water, gas, electrical, oil drilling, oil refining, natural resources extraction or mining operations, nuclear material research and enrichment, those attendant to the repair and construction of roads and highways, gas stations, solid waste collection and removal, trash and recycling collection, processing and disposal, sewer, data and internet providers, data centers, technology support operations, and telecommunications systems;

h. Manufacturing operations involved in food processing, manufacturing agents, chemicals, fertilizer, pharmaceuticals, sanitary products, household paper products, microelectronics/semi-conductor, primary metals manufacturers, electrical equipment, appliance, and component manufacturers, and transportation equipment manufacturers;

i. Services necessary to maintain the safety and sanitation of residences or essential businesses including security services, towing services, custodial services, plumbers, electricians, and other skilled trades;

j. Facilities providing pet adoption, grooming, daycare, or boarding services;

k. Media services including television, radio, and newspaper operations;

l. Automobile repair facilities, bike repair facilities, and retailers who generate the majority of their revenue from the sale of automobile or bike repair products. Contactless car washes, which are those that do not require person-to-person interaction between customers and employees, are permitted to operated;

m. New and used automobile dealers may sell cars through internet or other audiovisual means but they may not allow customers in showrooms;

n. Hardware stores;

o. Laundromats and dry cleaner services;

p. Utilities, including their contractors, suppliers, and supportive operations, engaged in power generation, fuel supply and transmission, water and wastewater supply;

q. Funeral homes, crematoriums and cemeteries;

r. Banks, credit unions, insurance providers, payroll services, brokerage services, and investment management firms;

s. Real estate services including brokers, title companies, and related services;

t. Businesses providing mailing and shipping services, including post office boxes;

u. Laboratories and defense and national security-related operations supporting the United States government, a contractor to the United States government, or any federal entity;

v. Restaurants, but only for delivery or carry out and local breweries or distillers but only for carry out;

w. Professional services, such as legal or accounting services, but only where necessary to assist in compliance with legally mandated activities; and

x. Logistics, and also businesses that store, transport, or deliver groceries, food, materials, goods or services directly to residences, retailers, government institutions, or essential businesses.

(4) "Individuals" means natural persons.

(5) "Gathering" means any grouping together of individuals in a single connected location.

(6) "Mass gathering" means any public or private gathering that brings together five (5) or more individuals in a single room or connected space, confined outdoor space or an open outdoor space where individuals are within six (6) feet of each other, but does not include the presence of five (5) or more individuals where those individuals regularly reside. "Mass gathering" does not include individuals who are public officials or public employees in the course and scope of their employment.

I HEREBY DIRECT AS FOLLOWS:

(1) All Mass Gatherings are hereby prohibited under the powers and authority set forth in the New Mexico Public Health Act, and all regulations promulgated pursuant thereto. This prohibition does not apply to necessary operations of essential businesses. Churches, synagogues, mosques, and all other houses of worship shall adhere to this

restriction, but nothing in this order is intended to preclude these faith-based institutions from holding services through audiovisual means.

(2) All businesses, except those entities identified as "essential businesses", are hereby directed to reduce the in-person workforce at each business or business location by 100%, except as provided herein. Retail businesses that are not "essential businesses" may operate to the minimum extent necessary to provide curbside pickup and/or delivery services to customers but only if they are legally permitted to provide their services through pickup and/or delivery.

(3) "Essential businesses" may remain open provided they minimize their operations and staff to the greatest extent possible. Further, all essential businesses shall adhere to social distancing protocols, which includes, maximum possible spacing from other individuals, avoid person-to-person contact, direct employees to wash their hands frequently, and essential businesses shall ensure that all surfaces are cleaned routinely.

(4) Beginning May 6, 2020, all "essential businesses" operating as a "retail space" and having a building footprint greater than 50,000 square feet and/or operating as a restaurant shall ensure that all employees are wearing face coverings or medical grade masks. Beginning May 11, 2020, all "essential businesses" operating a "retail space" shall require their employees to wear face coverings or medical grade masks. This provision applies to all businesses in all New Mexico counties including Cibola County, McKinley County, and San Juan County.

(5) This Order requires the closure of physical office spaces, retail spaces, or other public spaces of a business and does not otherwise restrict the conduct of business operations through telecommuting or otherwise working from home in which an employee only interacts with clients or customers remotely.

(6) The maximum number of customers allowed in a "retail space" at any given time shall be equal to 20% of the maximum occupancy of the retail space, as determined by the relevant fire marshal or fire department. If customers are waiting outside of a "retail space", they must to do so in compliance with social distancing protocols including the requirement that they maintain a distance of at least six-feet from other individuals, avoid person-to-person contact.

(7) All casinos shall close during the pendency of this Order. This directive excludes those casinos operating on Tribal lands. Horse racing facilities may operate without spectators.

(8) Hotels, motels, RV parks, and other places of lodging shall not operate at more than twenty-five percent of maximum occupancy. Health care workers who are engaged in the provision of care to New Mexico residents or individuals utilizing lodging facilities for extended stays, as temporary housing, or for purposes of a quarantine or isolation period shall not be counted for purposes of determining maximum

occupancy. Short-term vacation rentals, apartments, and houses are not permitted to operate except to provide housing to health care workers who reside out of state but are engaged in the provision of care to New Mexico residents.

(9) All call centers situated in New Mexico are directed to reduce their in-person workforce by 100%. This includes any call center that is part of or supports an essential business.

(10) Self-storage facilities should reduce operations to the minimum number of employees necessary to ensure public access to storage units and adequate security for storage units, including a 100% reduction in permanent on-site workforce whenever possible.

(11) This Order does not limit animal shelters, zoos, and other facilities with animal care operations from performing tasks that ensure the health and welfare of animals. Those tasks should be performed with the minimum number of employees necessary, for the minimum amount of time necessary, and with strict adherence to all social distancing protocols.

(12) Federally licensed firearm dealers may operate to the extent necessary to conduct background checks and to allow individuals to take possession of firearms that were ordered online or through other remote means. They shall provide these services by appointment only. Shooting ranges may open by appointment and shall ensure that appropriate social distancing measures are in place.

(13) Golf courses may open on a modified basis. They may be open for golf only and shall not provide any dine-in or retail services. They shall minimize staff and operations to the greatest extent possible and follow all sanitation and social distancing protocols.

(14) The New Mexico Department of Public Safety, the New Mexico Department of Homeland Security and Emergency Management, the Department of the Environment, and all other State departments and agencies are authorized to take all appropriate steps to ensure compliance with this Order.

(15) All public and private employers are required to comply with this Order and any instructions provided by State departments or agencies regarding COVID-19.

(16) In order to minimize the shortage of health care supplies and other necessary goods, grocery stores and other retailers are hereby directed to limit the sale of medications, durable medical equipment, baby formula, diapers, sanitary care products, and hygiene products to three items per individual. NMSA 1978, § 12-I0A-6 (2012).

I FURTHER DIRECT as follows:

(1) This Order shall be broadly disseminated in English, Spanish and other appropriate languages to the citizens of the State of New Mexico.

(2) This Order declaring restrictions based upon the existence of a condition of public health importance shall not abrogate any disease-reporting requirements set forth in the New Mexico Public Health Act.

(3) Nothing in this Order is intended to restrain or preempt local authorities from enacting more stringent restrictions than those required by the Order.

(4) This Order shall take effect immediately and remain in effect through May 15, 2020. This Order shall be effective in all counties of New Mexico except for Cibola County, McKinley County, and San Juan County. This Order may be renewed consistent with any direction from the Governor.

(5) Unless otherwise specified, Cibola County, McKinley County, and San Juan County remain subject to the terms of the April 11, 2020 Public Health Emergency Order through May 15, 2020.

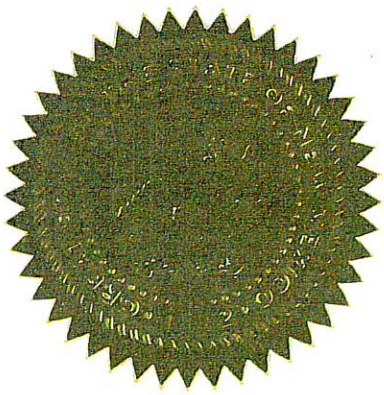
I FURTHER ADVISE the public to take the following preventive precautions:

- **New Mexico citizens should stay at home and undertake only those outings absolutely necessary for their health, safety, or welfare.**
- Retailers should take appropriate action consistent with this order to reduce hoarding and ensure that all New Mexicans can purchase necessary goods.
- Avoid crowds.
- Avoid all non-essential travel including plane trips and cruise ships. Self-quarantine or self-isolate for at least fourteen days after all out-of-state travel.
-

ATTEST:

Maggie Toulouse Oliver

MAGGIE TOULOUSE OLIVER
SECRETARY OF STATE



DONE AT THE EXECUTIVE OFFICE
THIS 5TH DAY OF MAY 2020

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

Kathyleen M Kunkel

KATHYLEEN M. KUNKEL
SECRETARY OF THE STATE OF NEW MEXICO DEPARTMENT OF HEALTH