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CHARLES D. BAKER
GOVERNOR

KARYN E. POLITO
LIEUTENANT GOVERNOR

ORDER AUTHORIZING THE RE-OPENING OF PHASE III ENTERPRISES

COVID-19 Order No. 43

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 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 protecting oneself and others by minimizing in-person contact with others and with environments where this potentially deadly virus may be transmitted including, in particular, spaces that present enhanced risks because of limited ventilation or large numbers 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 non-essential movement outside the home as a means of combatting the spread of COVID-19 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 as defined in the Order;

WHEREAS, on the basis of sustained improvement in the public health data, on May 18, 2020 and June 6, 2020, I issued COVID-19 Order Nos. 33 and 37 respectively, which authorized the re-opening of certain brick-and-mortar premises designated as "Phase I" and "Phase II" enterprises, subject to the requirement that all such enterprises comply with workplace safety rules and standards designed to protect against the risk of the COVID-19 virus;

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WHEREAS, the current, continuing trend of improvement in public health data permits a further, carefully phased relaxation of restrictions on businesses and other organizations, provided that any adjustment can only be maintained or expanded on the basis of continuing improvements in the public health data;

WHEREAS, according to the Centers for Disease Control and Prevention, a precipitous removal of targeted restrictions that have proven effective in combatting the spread of COVID-19 could result in a recurrence of the virus spread, as has been the experience in certain States and countries; 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 a 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:

1. Opening of Phase III Enterprises

Businesses and other organizations that are designated as Phase III enterprises on the chart attached as Schedule A are permitted to open and operate from their physical workplaces and facilities ("brick-and-mortar premises") according to the progressive, two-step schedule specified below. Phase III enterprises may open those premises to workers, customers, and the public only when authorized under the two-step schedule and provided that they comply with all workplace safety rules and standards issued or maintained pursuant to Section 4 and all other terms of this Order.[1]

Step 1: On July 6, 2020, Phase III enterprises that are designated as Step 1 enterprises on Schedule A may open their brick-and-mortar premises to workers, customers, and the public; provided, however, that for any premises located within the City of Boston, Step 1 of Phase III shall commence on July 13, 2020.

Step 2: If the public health data reflects continued positive progression, Step 2 will be announced by a subsequent Phase III Order. Effective upon the commencement of Step 2, Phase III enterprises that are designated as Step 2 enterprises on Schedule A may open their brick-and-mortar premises to workers, customers, and the public.

[1] Schedule A has been amended from the version adopted in COVID-19 Order No. 37 on June 6, 2020.

Businesses and other organizations that are designated as Phase IV enterprises on the chart attached as Schedule A must keep their brick-and-mortar premises closed to workers, customers, and the public and may not conduct Phase IV activities except as remote means permit. Phase IV enterprises shall not re-open their brick-and-mortar premises until specifically authorized to do so by subsequent Order. Phase IV enterprises and enterprises permitted to open only in Step 2 of Phase III may, however, open their premises to workers to the degree reasonably necessary to perform critical tasks that cannot be conducted remotely, such as ensuring on-going maintenance and security of the premises, preservation of inventory and equipment, and compliance with legal obligations.

2. Adjustments to Restrictions on Organized Sports Activities and Programs

Amateur Sports: The Secretary of the Executive Office of Energy and Environmental Affairs ("EEA"), subject to my approval, shall continue to issue Sector-Specific Rules to implement COVID-19 safety measures for organized youth and adult amateur sports activities and shall continue to issue COVID-19 Sector-Specific Rules and other safety standards for operators of and participants in outdoor recreational activities as authorized in COVID-19 Order Nos. 35 and 37.

The specific restrictions on amateur organized sports itemized in paragraphs (a) – (d) of section 3 of COVID-19 Order No. 35 are hereby rescinded. Accordingly, the Secretary of EEA, after consulting with the Department of Public Health, may determine appropriate Step 1 and Step 2 allowances, rules, and restrictions that

a. permit games, scrimmages, and tournaments for both no-contact and contact sports;
b. establish appropriate limitations on the number of persons that may participate at one time in an organized sports activity within a single facility or on a single court, field, or other playing surface; and
c. open indoor athletic facilities for use by both youths and adults.

Professional Sports: A professional sports organization that has adopted comprehensive COVID-19 health and safety rules under the authority of formal league rules or other binding agreements or affiliations may engage in organized games, tournaments, and other competitions within the Commonwealth. Prior to engaging in any such activities, a professional sports organization shall submit such COVID-19 health and safety rules to the Commissioner of the Department of Public Health for review.

No professional sports organization shall admit spectators or other members of the public to any training, practice, scrimmage, game, or tournament or other competition or exhibition until authorized by further Order.

Section 4 of this Order shall not apply to professional sports organizations that have complied with this section.

3. Premises Regulated by the Massachusetts Gaming Commission

The Massachusetts Gaming Commission ("MGC"), following consultation with the Department of Public Health, shall issue and may from time to time amend COVID-19 safety rules for the operation of all casinos, race tracks, and related facilities operating under licenses issued pursuant to Chapters 23K or 128A and subject to the MGC's regulatory authority, and for simulcasting facilities approved under Chapter 128A. The MGC shall have authority to promulgate and enforce such rules and in doing so may exercise any powers granted to it by Chapters 23K or 128A.

Section 4 of this Order shall not apply to casinos, race tracks, or other facilities subject to the MGC's regulatory authority and operated under licenses issued pursuant to Chapters 23K or 128A.

4. Sector-Specific Rules and Self-Certification

The Director of Labor Standards and the Commissioner of the Department of Public Health shall issue, subject to my approval, COVID-19 workplace safety rules for certain, specific Phase III enterprise sectors ("Sector-Specific Rules") to address the particular circumstances and operational needs of those specific sectors.

Phase III Sector-Specific Rules shall supplement the generally applicable COVID-19 safety rules applicable to all workplaces in the Commonwealth adopted in COVID-19 Order No. 33. Phase III enterprises shall adopt and comply with all Sector-Specific Rules applicable to their workplaces.

Newly Opened Premises: Phase III enterprises that are authorized under the terms of this Order to open their brick-and-mortar premises to workers, customers, and the public shall be required to self-certify that they are in compliance with all generally applicable COVID-19 workplace safety rules and any applicable Sector-Specific rules. Before opening a brick-and-mortar premises under the terms of this Order, a Phase III enterprise shall:

a. Bring the workplace into full compliance with all generally applicable COVID-19 workplace safety rules and all Sector-Specific Rules that are applicable to the individual workplace
b. Complete the required self-certification to verify compliance with all general and any applicable Sector-Specific Rules and make the self-certification available for inspection upon a request by State or Local authorities
c. Post on the premises all public notices and advisories that are required to be displayed under the terms of this Order

5. Enforcement and Authority

The Department of Labor Standards ("DLS"), in consultation with the Department of Public Health ("DPH"), shall have general authority to promulgate directives, regulations, and guidance to implement and enforce the COVID-19 workplace safety rules authorized under this Order.

A municipal board of health or authorized agent pursuant to G. L. c. 111, § 30 shall have concurrent authority with DLS and DPH to enforce the terms of this Order and any directives, regulations, or guidance issued by DLS, DPH, and EEA under the authority of this Order.

The provisions of Section 4 of COVID-19 Order No. 37 are hereby incorporated and re-stated in full and shall apply to Phase III enterprises except where this Order provides a specific limitation or exception.

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

6. Exceptions

This Order shall have no application to any of the following businesses, organizations, workplaces, or facilities:

a. Any municipal legislative body, the General Court, or the Judiciary
b. Federal governmental entities
c. Any health care facility or licensed health care provider
d. Any of the following workplaces or facilities with specialized functions and populations, provided that DPH shall in each case consult with the responsible authority and provide COVID-19 health and safety guidance as needed:
    - Public and private elementary and secondary (K-12) schools
    - Residential and day schools for special needs students
    - Licensed, approved, or exempt child care programs and any emergency child care centers and emergency residential programs operating under emergency authorization
    - Facilities operated by the Department of Correction or any Sheriff
    - Facilities operated, contracted, or licensed by the Department of Youth Services, Department of Mental Health, Department of Public Health, or the Department of Developmental Services
    - Facilities that provide safe spaces for the unstably housed such as homeless and domestic violence shelters

- and any other facilities or workplaces that the Commissioner of the Department of Public Health may in writing exempt from the terms of this Order

This Order is effective immediately and shall remain in effect until rescinded or until the state of emergency is ended, whichever occurs first.

Given in Boston at 11:40 AM/PM this 2nd day of July, two thousand and twenty

CHARLES D. BAKER
GOVERNOR
Commonwealth of Massachusetts

Schedule A to COVID-19 Order No. 43

	All Phase I, II, III, and IV enterprises are required to comply with general and, where applicable, sector-specific COVID-19 workplace safety rules administered by DPL, DPH, EEA, and local boards of health. Workplace safety rules include a variety of mandatory context-specific COVID-19 safety measures such as occupancy limitations, operational modifications, social distancing rules, and specialized cleaning requirements.
Phase I	As specified in COVID-19 Order No. 33: • Businesses and other organizations providing products and services identified as "COVID-19 Essential Services" in COVID-19 Order No. 13 • Manufacturing • Construction • Places of Worship • Firearms retailers and shooting ranges • General Use Offices • Car Washes • Hair Salons and Barber Shops • Pet Groomers • Drive-In Movie Theaters • Laboratories • Certain Outdoor Recreational Facilities and Activities as specified in Exhibit 1 to COVID-19 Order No. 33
Phase II	As specified in COVID-19 Order No. 37 and including specifically: • Retail Stores including stores in enclosed shopping malls • Restaurants providing seated food service prepared on-site and under retail food permits issued by municipal authorities pursuant to 105 CMR 590.000, including beer gardens/wineries/distilleries meeting these criteria o Step 1: outdoor table service o Step 2: indoor table service • Hotels, motels, inns, and other short-term lodgings (no events, functions, or meetings) • Limited organized youth and adult amateur sports activities and programs—no contact and no games or scrimmages, and indoor facilities limited to youth programs • Professional sports practice and training programs--no inter-team games and no admission for the public • Personal Services provided at a fixed place of business or at a client location o Step 1: Services involving no close personal contact (photography, window washers, individual tutoring, home cleaning, etc.) o Step 2: Services involving close personal contact (massage, nail salons, personal training for individuals or no more than 2 persons from same household, etc.) • Non-athletic instructional classes in arts/education/life skills for youths under 18 years of age in groups of fewer than 10 • Driving schools and flight schools • Outdoor historical spaces—no functions or gatherings and no guided tours • Funeral homes—increased capacity to permit 40% occupancy for one service at a time within the facility • Warehouses and distribution centers • Golf facilities including outdoor driving ranges • Other outdoor recreational facilities o pools, playgrounds and spray decks

	○ mini golf, go karts, batting cages, climbing walls, ropes courses • Post-Secondary/Higher Ed/Vocational-Tech/Trade/Occupational Schools ○ for the limited purposes of permitting students to complete a degree, program, or prerequisite for employment, or other similar requirement for completion, for summer youth programming including athletic facilities, and any necessary supporting services • Day Camps including sports and arts camps • Public libraries
Phase III	<u>Step 1</u> • Post-Secondary/Higher Ed/Vocational-Tech/Trade/Occupational Schools—general operations • Casino gaming floors • Horse racing tracks and simulcast facilities [a] • Indoor recreational and athletic facilities for general use (not limited to youth programs) • Fitness centers and health clubs including ○ cardio/weight rooms/locker rooms/inside facilities ○ fitness studios (yoga, barre, cross-fit, spin classes, general fitness studios) ○ indoor common areas ○ indoor swimming pools ○ indoor racquet courts and gymnasiums ○ locker rooms [a] ○ excluding saunas, hot-tubs, steam rooms • Museums • Indoor historic spaces/sites • Aquariums • Outdoor theatres and other outdoor performance venues not designated as Phase IV enterprises [a] • Movie theatres [a] • Sightseeing and other organized tours (bus tours, duck tours, harbor cruises, whale watching) • Motion picture, television, and video streaming production [a] • Fishing and hunting tournaments and other amateur or professional derbies • Outdoor event spaces used for gatherings and celebrations including those in parks, reservations, and other outdoor spaces not designated as Phase IV enterprises [a] • Indoor event spaces such as meeting rooms, ballrooms, and private party rooms--only when used for functions or events permitted under Sector-Specific Rules for Indoor and Outdoor Events [a] • Indoor non-athletic instructional classes in arts/education/life skills for persons 18 years or older • Indoor recreational activities with low potential for contact: batting cages, driving ranges, go karts, bowling alleys, rock-climbing walls [a] <u>Step 2</u> • Indoor performance venues used for live performances such as concert halls, theaters, and other indoor performance spaces not designated as Phase IV enterprises [a] • Indoor recreational activities with greater potential for contact: laser tag, roller skating, trampolines, obstacle courses [a]
Phase IV	• Amusement parks, theme parks, indoor and outdoor gaming arcades, indoor or outdoor water parks and indoor or outdoor ball pits [a] • Saunas, hot-tubs, steam rooms at fitness centers, health clubs, and other facilities • Bars, dance clubs, and nightclubs—venues offering entertainment, beverages, or dancing and not providing seated food service prepared on-site and under retail food permits issued by municipal authorities pursuant to 105 CMR 590.000

	• Beer gardens/breweries/wineries/distilleries not providing seated food service prepared on-site and under retail food permits issued by municipal authorities pursuant to 105 CMR 590.000
	• Large capacity venues used for group or spectator sports, entertainment, business, and cultural events including [a]
	  o Stadiums, arenas, and ballparks
	  o Dance floors
	  o Exhibition and convention halls
	• Street festivals and parades and agricultural festivals
	• Road races and other large, outdoor organized amateur or professional group athletic events
	• Overnight camps (Summer 2021) [a]
	This listing is subject to amendment.

Note: entries that reflect amendments from the version of Exhibit A adopted in COVID-19 Order No. 37 (June 6, 2020) are designated by the marker "[a]."