CHRISTOPHER T. SUNUNU
Governor

STATE OF NEW HAMPSHIRE
OFFICE OF THE GOVERNOR

STATE OF NEW HAMPSHIRE
BY HIS EXCELLENCY
CHRISTOPHER T. SUNUNU, GOVERNOR

Emergency Order #74 Pursuant to Executive Order 2020-04 as extended by Executive Orders 2020-05, 2020-08, 2020-09, 2020-10, 2020-14, 2020-15, 2020-16, 2020-17, 2020-18, 2020-20 and 2020-21

An order requiring persons to wear masks or cloth face coverings when in public spaces without physical distancing

WHEREAS, on Friday, March 13, 2020, the President of the United States declared a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak. This declaration remains in effect as of the date of this Executive Order; and

WHEREAS, on Friday, March 13, 2020, the Governor issued Executive Order 2020-04, an order declaring a state of emergency due to the Novel Coronavirus (COVID-19); and

WHEREAS, on June 15, 2020, the Governor issued Emergency Order 52, that transitioned from a Stay at Home Order to a Safer at Home Advisory, and that modified many of the restrictions on businesses, places of worship, and other places of commerce or gathering to allow them to continue to transition to full re-opening while limiting the risk of multiplying the spread of COVID-19 in New Hampshire; and

WHEREAS, on May 29, 2020, the U.S. Supreme Court observed that "[t]he precise question of when restrictions on particular social activities should be lifted during the [COVID-19] pandemic is a dynamic and fact-intensive matter subject to reasonable disagreement," and stated that "[o]ur Constitution principally entrusts the safety and health of the people to the politically accountable officials of the States to guard and protect," *South Bay United Pentecostal Church, et al., Applicants* v. *Gavin Newsom, Governor of California, et al.*, No. 19A1044, 590 U.S. __ (2020), at 3 (Roberts, C.J., concurring); and

WHEREAS, New Hampshire's courts have recognized that the COVID-19 pandemic justifies the Governor's declaration of a State of Emergency and the restrictions placed on New Hampshire's citizens, businesses, and other organizations through the Emergency Orders. *See Binford, et. al. v. Sununu,* Merrimack Cty. Super. Ct., 217-2020-CV-00152 (March 25, 2020) (Kissinger, J.), at 7-9; *Devine v. Sununu,* Rockingham Cty. Super. Ct., 218-2020-CV-00602 (June 18, 2020) (Schulman, J.); *Cooper v. Sununu,* Hillsborough Cty. Super. Ct., Southern Dist., 2020-CV-00266 (July 13, 2020) (Colburn, J.), at 15; *Athens v. Sununu*, Cheshire Cty. Super. Ct., 213-2020-CV-00104 (July 14, 2020) (Ruoff, J.), at 6–7; and

WHEREAS, New Hampshire courts have recognized that the outbreak and death toll in New Hampshire would likely be higher without the Governor's initial order declaring a State of Emergency, and that, given the alarming number of cases in neighboring states and the national and international coordination

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required to sufficiently control the spread of the disease, COVID-19 is a "disaster of major proportions" that lies "beyond local control." *BAMP Track Operations, LLC v. Sununu*, Merrimack Cty. Super. Ct., 214-2020-CV-00046, at 13; and

WHEREAS, the CDC anticipates that while a high percentage of individuals affected by COVID-19 will experience mild flu-like symptoms, some will have more serious symptoms and require hospitalization, particularly individuals who are elderly or have underlying chronic health conditions; and

WHEREAS, the CDC reports that COVID-19 is most commonly spread from an infected person to others through respiratory droplets, including:

- Between people who are in close contact with one another (within about 6 feet);
- Through respiratory droplets produced when an infected person coughs, sneezes, or talks;
- When the droplets land in the mouths or noses of people who are nearby or are possibly inhaled into the lungs; or
- By people who are not showing symptoms but who are infected with COVID-19.

WHEREAS, the CDC reports that COVID-19 is spread mainly from person to person, that COVID-19 is currently spreading very easily and sustainably, that COVID-19 is spreading more efficiently than influenza, and that the best way to prevent illness is to avoid being exposed to COVID-19 by taking the following steps:

- Maintain good physical distance (about 6 feet);
- Wash your hands often with soap and water, and if soap and water are not available, use a hand sanitizer that contains at least 60% alcohol;
- Routinely clean and disinfect frequently touched surfaces; and
- Cover your mouth and nose with a cloth face covering when around others.

WHEREAS, in recent weeks, New Hampshire has experienced a significant increase in COVID-19 infections, many caused by community transmission, and a significant increase in individuals hospitalized due to COVID-19; and

WHEREAS, with the approaching holiday season, it is expected that many Granite Staters will travel within and outside of New Hampshire and attend indoor gatherings, all of which is likely to continue the recent increase in COVID-19 infections and hospitalizations; and

WHEREAS, the New Hampshire Division of Public Health has advised that wearing a cloth face covering is an effective tool for slowing the spread of COVID-19.

NOW, THEREFORE, pursuant to Section 18 of Executive Order 2020-04 as extended by Executive Orders 2020-05, 2020-08, 2020-09, 2020-10, 2020-14, 2020-15, 2020-16, 2020-17, 2020-18, 2020-20, and 2020-21 it is hereby ordered, effective immediately, that:

1. Beginning on November 20, 2020, all persons over the age of 5 within the State of New Hampshire shall wear a mask or cloth face covering over their noses and mouths any time they are in public spaces, indoors or outdoors, where they are unable to or do not consistently maintain a physical distance of at least six feet from persons outside their own households.

2. For purposes of this Order, the term "public spaces" includes any part of private or public property that is generally open or accessible to members of the general public. Public spaces include, but are

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not limited to, lobbies, waiting areas, outside plazas or patios, restaurants, retail businesses, streets, sidewalks, parks, beaches, elevators, restrooms, stairways, parking garages, etc.

3. This Order is not intended to override any provisions related to the wearing of masks and cloth face coverings that are contained within industry specific guidance that is part of Exhibit B to Emergency Order 52. In any situation where the provisions of such industry specific guidance conflicts with this Order, the provisions of such industry specific guidance shall control.

4. Nothing in this Order shall be construed to prevent municipalities within the State of New Hampshire from enacting their own ordinances related to the wearing of masks or cloth face coverings that contain stricter provisions than those contained within this Order.

5. This Order shall not apply to the following:

    a) Educators, students, and staff within K-12 schools;
    b) Any person with a medical condition or disability that prevents wearing a mask or other face covering;
    c) Any person consuming food or drink or sitting at a restaurant or table to eat or drink;
    d) Any person engaged in physical strenuous physical activity;
    e) Any person giving a religious, political, media, educational, cultural, musical, or theatrical presentation or performance for an audience;
    f) Any person who is deaf or hard of hearing, and any person while communicating with an individual who is deaf or hard of hearing or who has a disability, medical condition, or mental health condition that makes communication with that individual while wearing a mask or face covering difficult;
    g) Any person obtaining or providing a service that requires the temporary removal of a mask or face covering;
    h) Any person asked to remove a mask or face covering to verify an identity for lawful purposes; or
    i) Any public safety worker actively engaged in a public safety role and when a mask or face covering would seriously interfere in the performance of their public safety responsibilities.

6. A person who declines to wear a mask or cloth face covering because of a medical or developmental issue, or difficulty breathing, shall not be required to produce documentation, or other evidence, verifying the condition.

7. The provisions of this Order shall remain in effect through January 15, 2021.

Given under my hand and seal at the Executive Chambers in Concord, this 19th day of November, in the year of Our Lord, two thousand and twenty, and the independence of the United States of America, two hundred and forty-four.

Chris Sununu

GOVERNOR OF NEW HAMPSHIRE

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