OFFICE OF THE GOVERNOR
STATE OF MONTANA

STEVE BULLOCK
GOVERNOR

MIKE COONEY
LT. GOVERNOR

TO: Montanans; all officers and agencies of the State of Montana
FROM: Governor Steve Bullock
DATE: March 24, 2020
RE: Directive Implementing Executive Orders 2-2020 and 3-2020 extending closures and updating social distancing requirements and guidance

Executive Orders 2-2020 and 3-2020 declare that a state of emergency exists in Montana due to the global outbreak of COVID-19 Novel Coronavirus.

Section 10-3-104, MCA, provides emergency powers to the Governor to "control ingress and egress to and from an incident or emergency or disaster area, the movement of persons within the area, and the occupancy of premises within the area." Moreover, pursuant to § 50-1-202, MCA, the Department of Public Health and Human Services (DPHHS), at the direction of the Governor, may issue orders to correct conditions of public health importance. This Directive, along with any prior Directive that implements and references the public health authorities of DPHHS provided in Title 50, constitutes a "public health . . . order[]" within the meaning of § 50-1-103(2), MCA, and is enforceable by the Attorney General, DPHHS, or a county attorney, consistent with that statute and related provisions of law.

To curtail the spread of the COVID-19 pandemic in Montana, it is necessary immediately to implement measures to ensure social distancing to prevent the spread of disease. Such an approach will not only reduce the overall number of infections in the state and preserve increasingly scarce health care resources, but it will allow Montanans an opportunity to continue working without being subject to unnecessary risk.

Further, to slow the growth of new infections, I previously directed two series of temporary closures and restrictions in response to the emergency. First, on March 15, 2020, I directed the closure of all non-residential public schools in Montana through March 27, 2020. On March 19, 2020, I issued another Directive with guidance that school districts should use the two-week closure period to plan for the possibility of additional closures. Second, on March 20, 2020, I issued a Directive that certain businesses be restricted temporarily from typical on-premises business by members of the public through March 27, 2020, while encouraging the expansion of take-out, drive-up, or delivery options.

The number of infections in Montana and throughout the United States continues to grow. In consultation with public health experts and emergency management professionals, I have determined that to protect public health and human safety it is necessary that these restrictions be extended for an additional two-week period.

In accordance with the authority vested in me under the Constitution, Article VI, Sections 4 and 13, and the laws of the State of Montana, Title 10, Chapter 3 and Title 50, Chapter 1, MCA, and other applicable provisions of the Constitution and Montana Law, I hereby direct the following measures be in place in the State of Montana effective immediately, except where otherwise specified:

1. Social Distancing Required

- Non-essential social and recreational gatherings of individuals outside of a home or place of residence of greater than ten people are prohibited immediately, if a distance of at least six feet between individuals cannot be maintained.

- Parents should avoid, if possible, placing children for childcare with grandparents, family members, friends, or providers over the age of 60 or immunocompromised persons.

2. Restrictions For On-Premises Business Extended

- Effective March 28, 2020, through April 10, 2020, the following places are to remain closed to ingress, egress, use, and occupancy by members of the public:
    - Restaurants, food courts, cafes, coffeehouses, and other similar establishments offering food or beverage for on-premises consumption.
    - Alcoholic beverage service businesses, including bars, taverns, brew pubs, breweries, microbreweries, distilleries, wineries, tasting rooms, special licensees, clubs, and other establishments offering alcoholic beverages for on-premises consumption.
    - Cigar bars.
    - Health clubs, health spas, gyms, aquatic centers, pools and hot springs, indoor facilities at ski areas, climbing gyms, fitness studios, and indoor recreational facilities.
    - Movie and performance theaters, nightclubs, concert halls, bowling alleys, bingo halls, and music halls.
    - Casinos.

- The places described above are permitted and encouraged to offer food and beverage using delivery service, window service, walk-up service, drive-through service, or drive-up service, and to use precautions in doing so to mitigate the potential transmission of COVID-19, including social distancing. Customers may order and pay by telephone or online from a retailer or manufacturer licensed to sell alcoholic beverages in the State of Montana. A retailer or manufacturer licensed to sell alcoholic beverages in the State of Montana may deliver for sale the alcoholic beverages for which it is licensed. Delivery must be conducted by the licensee's employees over the age of 21 and age of the purchaser and recipient must be verified at the time of delivery. The purchased alcohol must be hand-delivered to the purchaser.
    - In offering food or beverage, a place subject to this section may permit up to five members of the public at one time inside for the purpose of picking up their food or beverage orders, so long as those individuals are at least six feet apart from one another while on premises.

- The restrictions imposed by this order do not apply to any of the following:
    - Establishments that offer food and beverage not for on-premises consumption, including grocery stores, markets, convenience stores, pharmacies, drug stores, and food pantries, other than those portions of the establishments restricted above.
    - Room service in hotels.
    - Health care facilities, residential care facilities, university dining facilities, congregate care facilities, and juvenile justice facilities.
    - Crisis shelters or similar institutions.
    - Airport concessionaires.
    - Military dining facilities or military food operations.
    - Any facilities necessary for the response to the emergency, including schools providing necessary meal services to children.

- All of the above-named facilities and establishments should adopt appropriate social distancing practices to avoid the spread of disease, to the extent practicable.

- Consistent with the above, strict compliance with §§ 16-3-101, -219, -243, and -418, MCA, and other applicable laws are waived pursuant to § 10-3-104, MCA, and other applicable provisions of law.

3. Social Distancing Required for Other Retail Businesses

- Effective March 28, 2020, all other retail businesses not subject to Section 2 of this Directive shall establish, implement, and enforce social distancing policies sufficient to ensure a minimum of six feet of distance between customers.

- This requirement does not apply to grocery, health care, medical, or pharmacy services, which also are encouraged to comply with social distancing guidelines.

4. School Closure Extended

- All non-residential public schools in Montana are closed through April 10, 2020.

- School districts should follow the planning guidance provided in the March 19, 2020, Directive to seek waivers of pupil instruction time and obtain continued state funding during this period.

- Pursuant to that guidance, a district will not be required to reschedule in-person pupil-instruction time lost because of the closure if the board of trustees for the district approves the district's plan/report that it has made up the lost pupil-instruction time through remote learning, provided for meals for students, provided for services to students with disabilities, and provided other services customarily provided to students in school.
  - Districts will present an initial plan to the board of trustees for the district (school board) for approval, followed by periodic reports on implementation for approval as well, at intervals to be determined by the school board.
  - Waiver of required in-person pupil-instruction hours is subject to the final approval of the Governor, in consultation with the Superintendent of Public Instruction, consistent with § 10-3-104, MCA, and other applicable provisions of law. Presumptively, the Governor will approve waiver requests that are approved by school boards.
  - Districts whose plans/reports are approved will continue to receive all state funding.

- If a district's plan/report is not approved, then it will be required to reschedule the pupil-instruction time lost. State funding associated with additional necessary time will be financed through federal stimulus funds, if available, or through a supplemental appropriation in House Bill 3 during the 2021 legislative session, subject to legislative approval.

5. Directive Is Public Health Order Enforceable By County Attorney

- This Directive, along with any prior Directive that implements and references the public health authorities of the Department of Public Health and Human Services (DPHHS) provided in Title 50, constitutes a "public health . . . order[]" within the meaning of § 50-1-103(2), MCA, and is enforceable by the Attorney General, DPHHS, or a county attorney, consistent with that statute and related provisions of law.

6. Less-Restrictive Local Ordinances Preempted

- In the interest of uniformity of laws and to prevent the spread of disease, all inconsistent emergency county health ordinances are preempted by this Directive, but only to the extent they are less restrictive. Counties may adopt more restrictive ordinances.

Authorities: Section 10-3-104, MCA; §§ 50-1-103, -202, -203, and -204, MCA; 37 A.G. Op. 132 (1978); Executive Orders 2-2020 and 3-2020; Montana Constitution, Art. VI, Sections 4 and 13; §§ 10-3-103, -302, and -305, MCA; and all other applicable provisions of state and federal law.

Limitations

- This Directive is effective immediately and expires at the end of the declared state of emergency in Executive Orders 2-2020 and 3-2020, except where otherwise specified. The closures and restrictions on on-premises business it describes are in effect only through April 10, 2020, though may be extended or shortened by further Directive.
- This Directive shall be implemented consistent with applicable law and subject to the availability of appropriations.
- This Directive is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the State of Montana, its departments, agencies, or entities, its officers, employees, or agents, or any other person.