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 #62 Pursuant to Executive Order 2020-04 as extended by Executive Orders, 2020-05, 2020-08, 2020-09, 2020-10, 2020-14, and 2020-15

An order protecting pre-existing non-conforming use status for summer camps unable to operate due to COVID-19 during the summer of 2020

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, since March 13, 2020, during the State of Emergency, the Governor issued emergency orders that, among other things, (i) required public K-12 schools to transition to remote instruction and support, (ii) prohibited scheduled gatherings of 10 or more, (iii) required restaurants and bars to transition to take-out and delivery only, (iv) temporarily prohibited disconnection or discontinuance of certain services, including public utilities, in the event of non-payment, (v) temporarily prohibited evictions and foreclosures, (vi) dramatically expanded access to State unemployment benefits for individuals impacted by COVID-19, (vii) closed non-essential businesses and mandate that Granite Staters stay home with limited exceptions, (viii) expanded access to Telehealth Services to protect the public and health care providers, and (ix) restricted hotels and other lodging providers to provision of lodging for vulnerable populations and essential workers; 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, organizations, 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. The Governor anticipates continuing to ease restrictions as the status of COVID-19 in New Hampshire, the emerging science and medical understanding of COVID-19, and other data and information about COVID-19 permit; and

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WHEREAS, summer camps (including day camps, overnight camps, and DHHS classified Youth Recreation Camps) ("Summer Camps") have been an important part of the Granite State summer experience for well over a century; and

WHEREAS, while Summer Camps are permitted to operate under guidance issued as part of Exhibit B to Emergency Order 52, as extended by Emergency Order 61, due to the COVID-19 pandemic many Summer Camps have chosen, after much careful study, inability to comply with the guidance based on business-models and financing, and out of an abundance of caution, not to open for the summer of 2020; and

WHEREAS, the decision by many Summer Camps not to open for the summer of 2020 will mean that many of these camps have not operated since August of 2019; and

WHEREAS, many Summer Camps pre-date their town or city zoning ordinances and, under their current town or city zoning ordinances, are permitted to operate as pre-existing non-conforming uses; and

WHEREAS, many town or city zoning ordinances contain language regarding pre-existing non-conforming uses that is the same as or similar to the following: "Any non-conforming use may be continued unless discontinued for a continuous period of twelve (12) months, at which time it may not be reestablished and any future use shall be in conformity with this Ordinance;" and

WHEREAS, many town or city zoning ordinances also contain language that ignores intent when a non-conforming use is discontinued that is the same as or similar to the following: "'discontinued'" shall mean ceased, without any regard for the intent to cease or the intent to re-establish a Non-conforming Use;" and

WHEREAS, in order to protect the State's Summer Camps from uncertainty, expensive litigation, and potential forced discontinuation of their operations, it is necessary to provide clarity and support regarding the effects of any Summer Camp's decision to remain closed or otherwise limit its operations or capacity during the summer of 2020 for reasons related to COVID-19.

NOW, THEREFORE, I, Christopher T. Sununu, pursuant to Section 18 of Executive Order 2020-04 as extended by Executive Orders 2020-05, 2020-08, 2020-09, 2020-10, 2020-14, and 2020-15, hereby ordered, effective immediately, that:

1. Notwithstanding any provision of State law or any municipal ordinance or regulation, any Summer Camp that has been operating in the State of New Hampshire as a pre-existing non-conforming use under its applicable zoning ordinance, which is either (1) closed for the summer of 2020 due to the COVID-19 pandemic, or (2) has been forced to operate for a shorter season or at a reduced capacity during the summer of 2020 due to the COVID-19 pandemic, shall not:

   (a) lose its status as a pre-existing non-conforming use due to either: (i) its failure to operate during the summer of 2020, or (ii) its operation for a shorter season or at a reduced capacity during the summer of 2020; or

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(b) affect its status or ability to operate as a pre-existing non-conforming use in any other way due to either (i) its failure to operate during the summer of 2020, or (ii) its operation for a shorter season or at a reduced capacity during the summer of 2020.

Given under my hand and seal at the Executive Chambers in Concord, this 5th day of August, in the year of Our Lord, two thousand and twenty, and the independence of the United States of America, two hundred and forty-four.

GOVERNOR OF NEW HAMPSHIRE

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