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ORDER IMPLEMENTING A PHASED REOPENING OF WORKPLACES AND IMPOSING WORKPLACE SAFETY MEASURES TO ADDRESS COVID-19

COVID-19 Order No. 33

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 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 personal contact with environments where this potentially deadly virus may be transmitted;

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 designated certain COVID-19 Essential Services, as defined in the Order, temporarily closed the brick-and-mortar premises of businesses and organizations that do not provide COVID-19 Essential Services, and prohibited gatherings of more than 10 people;

WHEREAS, on March 31, 2020, April 28, 2020, and May 15, 2020, I issued COVID-19 Orders No. 21, 30, and 32, respectively, which extended the period in which COVID-19 Order No. 13 would continue to restrict the operation of businesses and organizations that do not provide COVID-19 Essential Services;

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WHEREAS, recent public health data indicate improvement in key areas of measurement as a result of the extraordinary efforts of health care providers in the Commonwealth and the public's unselfish compliance with the restrictions imposed in COVID-19 Order No. 13 and other limitations imposed in response to the COVID-19 health crisis;

WHEREAS, the improving public health data permits a carefully phased relaxation of certain restrictions that COVID-19 Order No. 13 has placed 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, and further provided that any adjustment must reflect the reality that the Commonwealth remains in the midst of a public health emergency, as demonstrated by reporting from the Department of Public Health that as of May 17, 2020, 2,597 persons remain hospitalized in the Commonwealth as a result of COVID-19 and 702 of these patients are receiving treatment in intensive care units;

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, and policing, protection, and preservation of public and private property;

NOW, THEREFORE, I hereby order the following:

1. Phase I Opening of Businesses and Other Organizations

Beginning on the dates specified below, businesses and other organizations that are included within the Phase I categories below are permitted to operate from their physical workplaces and facilities ("brick-and-mortar premises") and may open those premises to workers, customers, and the public provided they comply with all workplace safety rules and standards issued or maintained pursuant to Section 2 and all other terms of this Order.

Beginning May 18, 2020

A. COVID-19 Essential Services: businesses and other organizations providing products and services identified as "COVID-19 Essential Services" in Exhibit A to COVID-19 Order No. 13 (as amended March 31, 2020)
B. Manufacturing: businesses and other organizations engaged in the making, altering, repairing, finishing, or adapting for sale any article or part
C. Construction
D. Places of Worship: churches, temples, mosques, and other places of worship
E. Firearms retailers and shooting ranges

Beginning May 25, 2020

F. General Use Offices: businesses and other organizations operating within general use office spaces, provided that such offices located within the limits of the City of Boston shall not be open before June 1, 2020
G. Car Washes
H. Hair Salons and Barber Shops
I. Pet Groomers
J. Drive-In Movie Theaters
K. Laboratories: businesses and other organizations operating within facilities equipped and used for scientific experiments, research, or for the manufacture of drugs or chemicals or similar products
L. Certain Outdoor Recreational Facilities and Activities as specified in Attachment 1

As of the dates indicated above, businesses and other organizations included within categories B-L above are no longer subject to the restrictions imposed by COVID-19 Order No. 13.

Businesses and other organizations not included within categories A-L above remain subject to the restrictions imposed by COVID-19 Order No. 13.

2. Adoption of Workplace Safety Rules

General Workplace Safety Rules: All businesses and other organizations in the Commonwealth that are permitted to operate brick-and-mortar premises must immediately adopt and maintain the following generally applicable COVID-19 workplace safety rules.

Social Distancing	• All persons, including employees, customers, and vendors should remain at least six feet apart to the greatest extent possible, both inside and outside workplaces • Establish protocols to ensure that employees can practice adequate social distancing • Provide signage for safe social distancing • Require face coverings or masks for all employees
Hygiene Protocols	• Provide hand-washing capabilities throughout the workplace • Ensure frequent hand washing by employees and adequate supplies to do so • Provide regular sanitization of high touch areas, such as workstations, equipment, screens, doorknobs, restrooms throughout work site
Staffing and Operations	• Provide training for employees regarding the social distancing and hygiene protocols • Employees who are displaying COVID-19-like symptoms do not report to work • Establish a plan for employees getting ill from COVID-19 at work, and a return-to-work plan
Cleaning and Disinfecting	• Establish and maintain cleaning protocols specific to the business • When an active employee is diagnosed with COVID-19, cleaning and disinfecting must be performed

	• Disinfection of all common surfaces must take place at intervals appropriate to said workplace

The Director of the Department of Labor Standards ("DLS") is hereby directed to post on the Department's publicly accessible website a directive implementing these generally applicable COVID-19 workplace safety rules for all workplaces subject to this Order.

Sector-Specific Rules: The Director of Labor Standards, in consultation with the Commissioner of Public Health and subject to my approval, shall in addition issue COVID-19 workplace safety rules for certain, specific workplace sectors ("Sector-Specific Rules") to address the particular circumstances and operational needs of those specific workplace sectors. Sector-Specific Rules shall supplement the generally applicable COVID-19 safety rules applicable to all workplaces in the Commonwealth. Businesses and other organizations shall adopt and comply with all Sector-Specific Rules applicable to their workplace.

Phase I Sector-Specific Requirements: The Director of Labor Standards is directed immediately to issue detailed Sector-Specific Rules for the following workplace sectors:

Manufacturing
Construction
Places of Worship
General Use Offices
Car Washes
Hair Salons and Barber Shops
Pet Groomers
Laboratories

Earlier Issued DPH Sector-Specific Orders: The Commissioner of Public Health, at my direction, has previously issued orders and mandatory guidance implementing detailed, sector-specific COVID-19 workplace safety standards for the workplaces indicated below that have been designated as Essential Services pursuant to COVID-19 Order No. 13. These previously issued orders and mandatory guidance, as they may be subsequently amended by the Commissioner, shall continue to apply to these businesses and organizations under the terms of this Order.

Grocery Stores and Pharmacies
Nurseries, Greenhouses, Garden Centers, and Agricultural Supply Stores
Farmer's Markets, Farm Stands, and Community-Supported Agriculture Programs (CSAs)

Otherwise Applicable Health and Safety Standards: These generally applicable COVID-19 workplace safety rules and any Sector-Specific Rules shall supplement and, except as

provided in Section 6 below, shall not displace otherwise applicable health and safety rules issued by any Federal, State, or Local authority acting within the scope of its lawful authority.

3. Compliance and Self-Certification

Newly Opened Workplaces: Businesses and other organizations 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 certify compliance with all applicable general and applicable Sector-Specific rules. Before opening a brick-and-mortar premises under the terms of this Order, a business or other organization not previously authorized to operate as COVID-19 Essential Service pursuant to COVID-19 Order No. 13 shall be required to implement the following measures:

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 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

The Director of Labor Standards shall establish the procedures and publish the forms of self-certification and public notice required to comply with these provisions.

Re-starting Construction Projects: In addition, before any construction project that is inactive as of May 17, 2020 re-opens pursuant to this Order, the general contractor shall:

a. Ensure that all municipal permits are in place
b. Satisfy all conditions that appear in the Sector-Specific Rules for Construction; and
c. For all projects that do not involve construction or remodeling in 1 to 3 unit residences involving 5 or fewer workers, notify the City or Town in which the project is located of the date that construction will re-start and meet any City or Town requirements necessary to confirm that the project satisfies all of the conditions that appear in the Sector-Specific Rules for Construction.

COVID-19 Essential Services: A business or other organization that has prior to the issuance of this Order been authorized to remain open to workers, customers, and the public as a "COVID-19 Essential Service" shall have until May 25, 2020 to comply with and certify its compliance with any COVID-19 workplace safety rule issued pursuant to this Order or with the public notice provisions specified above.

Such businesses and other organizations shall, in any event, immediately undertake best efforts to comply with the generally applicable COVID-19 workplace safety rules adopted in Section 2 of this Order.

4. Limitations on Gatherings

A business or other organization that is authorized to open its brick-and-mortar premises to workers, customers, and the public under the terms of this Order shall not be subject to the 10-person limitation on gatherings established in Section 3 of COVID-19 Order No. 13 in its normal operations of those premises; provided, however, that such businesses and other organizations must comply with the general social distancing requirements and any more specific limitations on gatherings and meeting sizes established pursuant to the provisions of Section 2 of this Order.

Section 3 of COVID-19 Order No. 13 shall otherwise remain in effect.

5. Limited Operations by Retail Stores not providing Essential Services

Retail stores that do not provide Essential Services as defined in COVID-19 Order No. 13 (and Exhibit A to the Order) are not included in the Phase I Opening and may not open their brick-and-mortar premises. These retail businesses may, however, continue to provide limited remote fulfillment in accordance with guidance issued by the Executive Office of Housing and Economic Development, provided that they adopt and maintain the generally applicable COVID-19 workplace safety rules in Section 2. (Guidance available at https://www.mass.gov/info-details/covid-19-essential-services-faqs#general-questions---essential-services-related-)

Additionally, I hereby direct the Executive Office of Housing and Economic Development to issue supplemental guidance specifying methods by which retail businesses may permissibly expand their current limited remote fulfilment operations to accommodate customer curb-side pick-up. This guidance shall permit retail business customer curb-side pick-up transactions beginning May 25, 2020.

6. Enforcement and Authority

The Department of Labor Standards, 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 established or authorized under this Order.

DPH shall have specific authority to promulgate directives, regulations, and guidance to implement and enforce the terms of this Order as it applies to businesses, organizations, and workplaces subject to the sanitary code established pursuant to section 127A of chapter 111 of the General Laws and where DPH otherwise has existing regulatory authority.

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 and DPH under the authority of this Order.

This Order is intended to establish a uniform set of COVID-19 workplace safety rules for all businesses and other organizations operating brick-and-mortar premises across the Commonwealth. No municipal or other local authority should adopt or enforce any workplace

health or safety rule to address COVID-19 that is in addition to, stricter than, or otherwise in conflict with any COVID-19 workplace safety rule adopted in this Order or under the implementing directives, regulations, and guidance issued by DLS or DPH under the authority granted by this Order. DLS, DPH, and each municipal or local authority shall uniformly apply any enforceable COVID-19 workplace safety rule.

Violation of the terms of this Order or any directives, regulations, or guidance issued by DLS or DPH pursuant to this Order may result in a civil fine of up to $300 per violation. This Order may also be enforced by injunction. A motion for an injunction to enforce this Order or any directives, regulations, or guidance issued on its authority may be filed in the district court or other any court of competent jurisdiction for the municipality in which the violation has been charged.

In issuing directives, regulations, or guidance under the terms of this Order, (a) the Director of Labor Standards shall act under the authority G. L. c. 149, §§ 6 & 6½; and (b) the Commissioner of Public Health shall act under the authority of G. L. c. 17, § 2A and G. L. c. 111, §§ 6 & 127A, insofar as those statutes are consistent with the provisions of this Order and authority is available thereunder. The Director of Labor Standards and the Commissioner of Public Health may issue regulations implementing the terms of this Order pursuant to the processes generally provided in G. L. c. 30A, §§ 2-6.

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.

7. <u>Exceptions</u>

This Order shall not apply 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 provider licensed by the Department of Public Health
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 or licensed by the Department of Mental Health or the Department of Developmental Services
- And any other facilities or workplaces that the Commissioner of Public Health may in writing exempt from the terms of this Order

COVID-19 Order No. 32 is hereby rescinded.

COVID-19 Order No. 13 as modified by this Order is hereby extended and shall remain in effect until rescinded or until the state of emergency is ended, whichever occurs first.

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 9:50 AM this 18th day of May, two thousand and twenty

Charles D Baker

CHARLES D. BAKER
GOVERNOR
Commonwealth of Massachusetts

Attachment 1 to COVID-19 Order No. 33

Defining Certain Outdoor Recreational Activities and Facilities
included in the Phase I Opening

"Certain Outdoor Recreational Activities and Facilities" means the following:

a. **campgrounds**; provided, however, that individual campsites, including campsites with cabins and campsites for self-contained recreational vehicles, be occupied and used only by single household groups, and provided further that all common areas, excluding restrooms, remain closed

b. **recreational boating facilities**, solely for the purpose of enabling recreational boating, including rowing and sailing facilities, yacht clubs, boat clubs, and boat rentals; provided, however, that the occupants of a vessel be limited to a single household group and that no more than 10 people are aboard a single vessel at any one time

c. **for hire and charter fishing**; provided, however, that no more than 10 people, including any captain and crew, are aboard a single vessel at any one time

d. **white water rafting**; provided, however, that the occupants of a raft or kayak be limited to a single household group and, if applicable, a guide

e. **zoos, botanical gardens, nature centers, and outdoor wildlife reserves**; provided, however, that buildings, other than restrooms, remain closed to the public; and provided, further that admission be capped at not more than 20% of overall outdoor capacity

f. **businesses providing outdoor recreational experiences and educational activities**, including ski area summer activities, alpine slides, zip-lines, horse riding schools and stables, mountain biking, and archery ranges

CDB

May 18, 2020