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ORDER CLARIFYING THE PROGRESSION OF THE COMMONWEALTH'S PHASED WORKPLACE RE-OPENING PLAN AND AUTHORIZING CERTAIN RE-OPENING PREPARATIONS AT PHASE II WORKPLACES

COVID-19 Order No. 35

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 continued 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 measures implemented in response to the COVID-19 health crisis;

WHEREAS, on May 18, 2020, I issued COVID-19 Order No. 33, which authorized the re-opening of certain brick-and-mortar premises designated as "Phase I" workplaces ("Phase I enterprises"), subject to the requirement that all such workplaces comply with workplace safety rules and standards implemented to protect against the risk of the COVID-19 virus and which otherwise further extended the period in which COVID-19 Order No. 13 will continue to restrict the operations of businesses and organizations that do not provide Essential Services or that have not been designated as Phase I workplaces;

WHEREAS, a sustained trend of improvement in public health data will permit a continuing, 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 31, 2020, 1,824 persons remain hospitalized in the Commonwealth as a result of COVID-19 and 436 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, 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. **Advance Preparations by Phase II Enterprises**

Beginning immediately, businesses and other organizations that are included within Phase II of the re-opening plan, as defined in Section 2 below, may open their physical workplaces and facilities ("brick-and-mortar premises") to workers for the purpose of preparing for a Phase II re-opening when authorized. In preparing their premises for re-opening, Phase II businesses and other organizations ("Phase II enterprises") must at all times comply with all generally applicable COVID-19 workplace safety rules and any relevant sector-specific COVID-

19 workplace safety rules issued pursuant to Section 2 of COVID-19 Order No. 33 or otherwise by the Department of Labor Standards ("DLS"), the Department of Public Health ("DPH"), or any other agency authorized to issue similar health and safety rules.

Phase II enterprises may not open their premises to customers and the public generally until authorized to do so by subsequent Order.

2. Designation of Phase II Enterprises

Phase II enterprises are businesses or other organizations that meet each of the following conditions:

They are

- not currently permitted to open their premises as an Essential Service or Phase I enterprise pursuant to Section 1 of COVID-19 Order No. 33;
- not closed by any COVID-19 Order separate from or in addition to COVID-19 Order No. 13;
- not excluded or excepted from the terms of this Order in Section 4; and
- not designated on the chart below as a Phase III or Phase IV enterprise.

	All Phase II, III, and IV enterprises will be required to comply with general and, where applicable, sector-specific COVID-19 workplace safety rules administered by DPL, DPH, and local boards of health. Workplace safety rules will 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 II	Enterprises that meet all of the conditions specified above and including • 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 • 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
	  o mini golf, go karts, batting cages, climbing walls, ropes courses
	• Post-Secondary/Higher Ed/Vocational-Tech/Trade/Occupational Schools
	  o 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	• Post-Secondary/Higher Ed/Vocational-Tech/Trade/Occupational Schools—general operations
	• Casino gaming floors
	• Horse racing simulcast facilities (no spectators)
	• Indoor recreational and athletic facilities for general use (not limited to youth programs)
	• Fitness centers and health clubs including
	  o cardio/weight rooms/locker rooms/inside facilities
	  o fitness studios (yoga, barre, cross-fit, spin classes, general fitness studios)
	  o indoor common areas
	  o indoor swimming pools
	  o indoor racquet courts and gymnasiums
	  o locker rooms/shower rooms
	  o excluding saunas, hot-tubs, steam rooms
	• Museums
	• Indoor historic spaces/sites
	• Aquariums
	• Outdoor theatres and performance venues of moderate capacity
	• Indoor theatres, concert halls, and other performance venues of moderate capacity
	• Sightseeing and other organized tours (bus tours, duck tours, harbor cruises, whale watching)
	• Fishing and hunting tournaments and other amateur or professional derbies
	• Weddings/events/gatherings in parks, reservations, and open spaces with allowance for moderate capacity
	• Overnight camps
	• Indoor non-athletic instructional classes in arts/education/life skills for persons 18 years or older
	• Indoor recreational businesses: batting cages, driving ranges, go karts, bowling alleys, arcades, laser tag, roller skating rinks, trampolines, rock-climbing
	This listing is subject to amendment.

Phase IV	• Amusement parks, theme parks, indoor or outdoor water parks • 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

	○ Theaters and concert halls ○ Ballrooms ○ Stadiums, arenas, and ballparks ○ Dance floors ○ Exhibition and convention halls • Private party rooms • Street festivals and parades and agricultural festivals • Road races and other large, outdoor organized amateur or professional group athletic events This listing is subject to amendment.

3. Rules for Phase II Limited Organized Sports Activities and Programs

Amateur Sports: Effective immediately, organizers of sports activities and programs for youths and adults and facilities that host such programs or activities may open their premises to employees to begin preparations, consistent with the provisions of Section 1, for authorized Phase II activities. In addition to complying with generally applicable COVID-19 workplace safety rules, organizers of sports activities and programs for youths and adults and facilities that host such programs or activities shall be subject to the following directives during Phase II:

a. Programs for contact sports must limit activities exclusively to no-contact drills and practices. Programs for no contact sports where ordinary play allows for social distancing may include ordinary play.
b. Games, scrimmages, and tournaments shall not be permitted for any organized sports activities.
c. Programs must separate participants into groups of no more than 10 participants, including coaches and staff.
d. Indoor athletic facilities shall be open and available exclusively for the use of supervised sports programs, including sports camps, for youths under the age of 18.

The Secretary of the Executive Office of Energy and Environmental Affairs ("EEA") shall issue guidance to implement these directives and all generally applicable COVID-19 workplace standards for organizers of youth and adult sports programs and operators of facilities that host those programs. Organizers of youth and adult sports programs shall follow the EEA guidance; provided, however, that when the program is governed by formal league rules or other binding agreements or affiliations, the organizer shall comply with any COVID-19 and other health and safety rules applicable under those authorities. The requirements of items (a) – (d) above shall apply in all circumstances.

Professional Sports: Effective immediately, professional sports organizations may open their premises to employees and other workers for the activities provided for in Section 1 and may also open their premises to employees for on-premises athletic practices and training,

subject to adoption of COVID-19 health and safety rules implemented under the authority of formal league rules or other binding agreements or affiliations.

Professional sports organizations may not engage in inter-team games within the Commonwealth and may not open any facilities within the Commonwealth to the public until further Order.

4. Preparations and Accommodation for Outdoor Restaurant Dining Service

Restaurants will be authorized to provide outdoor table service at the commencement of Phase II of the Commonwealth's phased re-opening of workplaces. If the public health data reflects continued positive progression, restaurants will be authorized at a later date and by a subsequent Phase II Order to commence indoor table service. In each case, restaurants will be required to comply with sector-specific COVID-19 workplace safety rules for restaurants.

"Outdoor table service" shall mean service that is provided outside the restaurant building envelope, whether on a sidewalk, patio, deck, lawn, parking area, or other outdoor space. Outdoor table service may be provided under awnings or table umbrellas or other cover from the elements, provided, however, that at least 50 percent of the perimeter of any covered dining space must remain open and unobstructed by any form of siding or barriers at all times.

Notwithstanding the provisions of chapter 40A of the general laws, or any special permit, variance or other approval thereunder, or any other general or special law to the contrary, a city or town may approve requests for expansion of outdoor table service, including in the description of licensed premises as described below. Prior to such approval, the mayor, select board, or chief executive as established by charter or special act, shall establish the process for approving such requests. Such process need not comply with the notice and publication provisions of section 11 of chapter 40A.

Any such approval may be exercised immediately upon filing of notice thereof with the city or town clerk, without complying with any otherwise applicable recording or certification requirements.

In order to provide improved opportunities for outdoor table service, for any type of license that permits the sale of alcoholic beverages for on-premises consumption, a local licensing authority ("LLA") may grant approval for a change in the description of the licensed premises for the purpose of permitting outdoor alcohol service as the LLA may deem reasonable and proper, and issue an amended license to existing license holders, without further review or approval by the Alcoholic Beverages Control Commission ("ABCC") prior to issuance. Upon approval of an amended license, the LLA shall provide notice of the amended license to the ABCC. Nothing in this Order shall prevent the ABCC from exercising its statutory or regulatory enforcement authority over any such amended license issued.

On November 1, 2020 or the date this Order is rescinded, whichever is sooner, any approval issued under this Section, including any amended license issued by an LLA as a result of this Order, shall automatically revert back to its status prior to the approval of the change for expansion of outdoor table service or in the description of a licensed premises.

5. Sector-Specific Rules

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

6. Limitations on Gatherings

A Phase II enterprise that is authorized to open its brick-and-mortar premises to workers 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 Phase II enterprises must comply with the social distancing requirements in the Commonwealth's generally applicable COVID-19 workplace safety rules, any more specific limitations on gatherings and meeting sizes included in any applicable Sector-Specific Rules, and any other similar restrictions specified in this Order.

Section 3 of COVID-19 Order No. 13 shall otherwise remain in effect for businesses or organizations not permitted to open their brick-and-mortar premises as COVID-19 Essential Services, or Phase I or Phase II enterprises.

4. 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 provider licensed by the Department of Public Health or the Board of Registration in Medicine
d. Any of the following workplaces or facilities with specialized functions and populations:
    - 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

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 2:20 PM this 1st day of June, two thousand and twenty

CHARLES D. BAKER
GOVERNOR
Commonwealth of Massachusetts